TEXAS REGISTER

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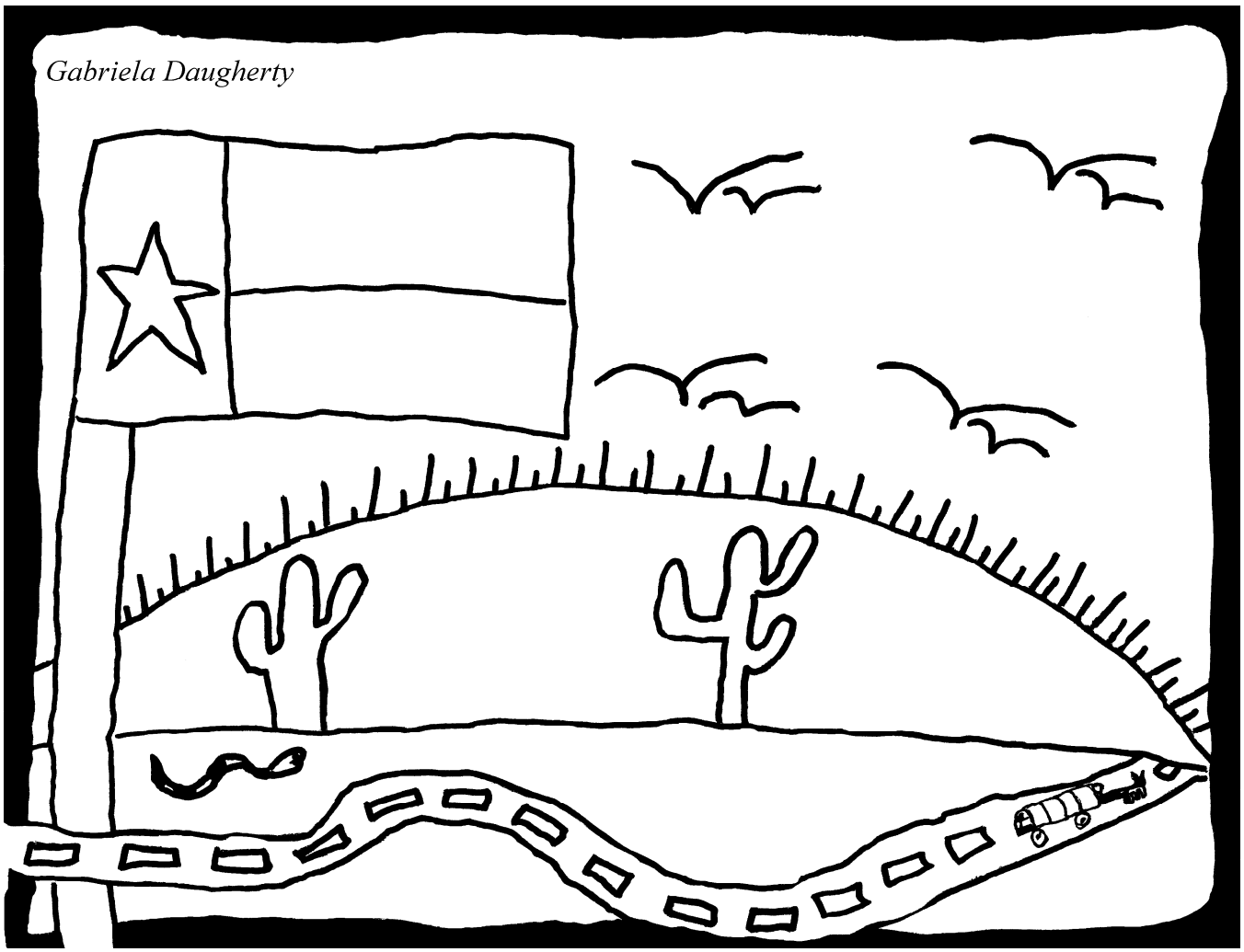

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

ADOPTED RULES

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0806-GA

Requestor:

Mr. Robert Scott

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Eligibility for employment of a former member of a school district board of trustees under section 11.063 of the Education Code (RQ-0806-GA)

Briefs requested by July 17, 2009

RQ-0807-GA

Requestor:

The Honorable H. Michael Bartley

Delta County Attorney

Post Office Box 462

Cooper, Texas 75432

Re: Whether a passenger who is not a county employee may be transported in a county vehicle (RQ-0807-GA)

Briefs requested by July 20, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200902587
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 24, 2009

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Opinions

Opinion No. GA-0721

The Honorable Jim Pitts

Chair, Committee on Appropriations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Hall County Hospital District may contribute funds for the construction of a building to house emergency service vehicles operated by the City of Turkey (RQ-0772-GA)

S U M M A R Y

The Hall County Hospital District has express authority to provide for the operation of a mobile emergency medical service. The District's board of directors has the discretion to determine in the first instance whether an expenditure of District funds to construct a building to house the City of Turkey's emergency service vehicle is necessary to provide for the operation of a mobile emergency medical service and whether such an expenditure comports with the requirements of article III, section 52(a) of the Texas Constitution.

Opinion No. GA-0722

The Honorable Jim Pitts

Chair, Committee on Appropriations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the phrase "cut of a county road" in Local Government Code section 240.907 includes boring under the road (RQ-0776-GA)

S U M M A R Y

Texas Local Government Code section 240.907 authorizes counties to impose a fee not to exceed $500 on a person or entity for each cut of a county road during or as an incident to the installation, maintenance, or repair of a person's or entity's facilities or properties. A county may impose the section 240.907 fee for the activities of excavating or cutting the surface of a county road but not for activities that bore or tunnel under a county road without cutting the road surface.

Opinion No. GA-0723

The Honorable Hope Andrade

Texas Secretary of State

Post Office Box 13697

Austin, Texas 78711-3697

Re: Whether a private employer may limit the notarial acts performed by an employee who is a notary public (RQ-0779-GA)

S U M M A R Y

A notary public is an appointed public officer for limited purposes. A private employer may limit or prohibit an employee who is a notary public from performing notarial acts during employment hours.

Because a commission is issued to an individual notary, the notary's private employer may not take possession of or transfer the notary's book and seal after the notary leaves employment. The secretary of state may adopt rules to specify the details of the disposition of a notary's book and seal.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200902588
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: June 24, 2009

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER R. FORMOSAN TERMITE QUARANTINE

4 TAC §19.181

The Texas Department of Agriculture (the department) adopts on an emergency basis an amendment to §19.181, concerning a quarantine for the Formosan subterranean termite, *Coptotermes formosanus* Shiraki. The amendment adds Brazos, Chambers, Comal, Fort Bend, and Nacogdoches counties to the list of subterranean termite-infested counties in Texas. The Texas A&M University recently informed the department that the subterranean termite infestations were detected in these five counties since publication of the list of the 25 termite-infested counties in the August 11, 2006, issue of the *Texas Register* (31 TexReg 6297). The amended section is adopted on an emergency basis to slow the spread of this termite into free areas of Texas.

The department believes that it is necessary to take this immediate action to reduce spread of the Formosan subterranean termite into free areas of Texas, and that adoption of this amended section on an emergency basis is both necessary and appropriate. There is an imminent peril to homeowners, pecan trees in backyards, and possibly pecan orchards and other commercial fruit trees. The amended section does not alter the natural spread of this termite but requires termite-free movement of the quarantined articles, which may include fumigation of railroad ties, the primary pathway of the termite spread. Amended §19.181 adds Brazos, Chambers, Comal, Fort Bend, and Nacogdoches counties to the list of the Formosan subterranean termite-infested counties in Texas. In addition, one county from the list is repositioned to correct the alphabetical order. The department may propose adoption of this rule amendment on a permanent basis in a separate submission.

The amendment is adopted on an emergency basis under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.181. Quarantined Areas.

The quarantined areas are:

(1) - (9) (No change.)

(10) Texas counties: Anderson, Angelina, Aransas, Bexar, Brazoria, Brazos, Cameron, Chambers, Collin, Comal, Colorado, Dallas, Denton, Fort Bend, Galveston, Gregg, Harris, Henderson, Hidalgo, [~~Harris,~~] Jefferson, Johnson, Liberty, Nacogdoches, Nueces, Orange, Polk, Rockwall, Smith, Tarrant, and Travis.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2009.

TRD-200902444
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective Date: June 16, 2009
Expiration Date: October 13, 2009
For further information, please call: (512) 463-4075

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 9. AMBULANCE SERVICES

1 TAC §354.1115

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1115, Authorized Ambulance Services.

Background and Justification

Senate Bill 2424 of the 81st Legislature, Regular Session, 2009, requires the Health and Human Services Commission (HHSC) by rule to change the Medicaid authorization process for certain non-emergency ambulance services. Authorizations that are for a one-day non-emergency ambulance transport may be obtained on the same day or the next business day following the transport. If an authorization is requested for transport on multiple days, such as for a series of medical appointments, the authorization must be obtained prior to any transport. HHSC must have staff available to evaluate requests for authorization for a minimum of 12 hours each day, excluding state holidays and weekends. Authorization requests that are granted must be effective for a period of not more than 180 days.

Section-by-Section Summary

HHSC proposes to make the following changes to §354.1115 to reflect the required changes to the authorization process for non-emergency ambulance services:

Revise paragraph (2)(A) to remove the reference that an authorization must be obtained before non-emergency ambulance transport in all circumstances.

Revise paragraph (2)(A)(iii) by inserting text to require that the authorization period be effective for a period of not more than 180 days.

Revise paragraph (2) by inserting new subparagraph (B) to allow for an authorization for a one-day non-emergency ambulance transport to be made on the same day or the next business day following the transport.

Revise paragraph (2) by inserting new subparagraph (C) to require that an authorization for transport on multiple days be obtained prior to any transport.

Insert new paragraph (3) to require that staff be available to evaluate authorization requests at least 12 hours each day excluding state holidays and weekends.

Paragraphs and subparagraphs were renumbered and relettered as necessary to accommodate the new language.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be a cost savings to state government. The current contract with the Medicaid claims administrator includes an amendment for a 24 hours a day, 7 days a week telephone request line at a cost of $215,000 annually. This contract amendment would be canceled for a savings of $107,500 General Revenue ($215,000 All Funds) each year, based on a 50 percent administrative federal match rate. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with the amended requirements, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of the proposed amendment will be improved efficiency in operations by processing requests for non-emergency ambulance services only during hours when most requests are received.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code. Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. The changes this rule makes do not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

Public Comment

Written comments on the proposed amendments to the rule may be submitted to Garry Walsh, Senior Policy Analyst, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 13247, H390, Austin, Texas 78711; by fax to (512) 249-3731; or by e-mail to garry.walsh@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1115. Authorized Ambulance Services.

In addition to the requirements stated in this section, a provider must comply with §354.1001 of this title (relating to Claim Information Requirements), and §354.1113 of this title (relating to Additional Claim Information Requirements).

(1) Emergency Ambulance Transportation. The Commission or its designee will reimburse a Medicaid-enrolled provider for the emergency transport of a Medicaid recipient with an emergency medical condition in accordance with the following criteria:

(A) Transport must be to an appropriate facility. If the transport is made to a facility other than an appropriate facility, payment is limited to the amount that would be payable to an appropriate facility; or

(B) Transport by air or boat ambulance is reimbursable if the time and distance required to reach an appropriate facility make the transport by ground ambulance impractical or would endanger the life or safety of the recipient. If the recipient's medical condition does not meet the emergency air or boat criteria, but does meet the emergency ground transportation criteria, the payment to the provider is limited to the amount that would be payable at the emergency ground transportation rate.

(2) Non-emergency Ambulance Transportation. The Commission or its designee may reimburse a Medicaid-enrolled ambulance provider for non-emergency transport when the following requirements are met:

(A) A physician, nursing facility, health care provider, or other responsible party, shall obtain authorization from the Commission or its designee when [~~before~~] an ambulance is used to transport a recipient in circumstances not involving an emergency.

(i) Except as provided by clause (iii) of this subparagraph, a request for authorization must be evaluated by the Commission or its designee based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition.

(ii) Except as provided by clause (iii) of this subparagraph, a response to a request for authorization must be made by the Commission or its designee not later than 48 hours after receipt of the request.

(iii) A request for authorization must be granted immediately by the Commission or its designee and must be effective for a period of not more than 180 days from the date of issuance if the request includes a written statement from a physician that:

(I) States that alternative means of transporting the recipient are contraindicated; and

(II) Is dated not earlier than the 60th day before the date on which the request for authorization is made.

(B) If the request is for authorization of ambulance transportation for only one day in circumstances not involving an emergency, a physician, nursing facility, health care provider, or other responsible party shall obtain authorization from the Commission or its designee no later than the next business day following the day of transport.

(C) If the request is for authorization of ambulance transportation for more than one day in circumstances not involving an emergency, a physician, nursing facility, health care provider, or other responsible party shall obtain a single authorization before an ambulance is used to transport a recipient.

(D) [~~(B)~~] A person denied payment for ambulance services rendered is entitled to payment from the nursing facility, healthcare provider, or other responsible party that requested the services if:

(i) Payment under the Medicaid program is denied because of lack of prior authorization; and

(ii) The person provides the nursing facility, healthcare provider, or other responsible party with a copy of the bill for which payment was denied.

(3) The Commission or its designee authorized to act on behalf of the Commission must be available to evaluate requests for authorization under this subsection not less than 12 hours each day, excluding weekends and state holidays.

(4) [~~(3)~~] Hearings. For information about recipient fair hearings, refer to the Commission's fair hearing rules, Chapter 357 of this title (relating to Hearings).

(5) [~~(4)~~] Provider Appeal. An ambulance provider denied payment for services rendered because of failure to obtain prior authorization, or because a request for prior authorization was denied, is entitled to appeal the denial of payment to the Commission or its designee. A denial of a claim may be appealed by a provider under the Commission's appeals procedures contained in the Texas Medicaid Provider Procedures Manual and §354.1003 of this title (relating to Time Limits for Submitted Claims).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902478

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

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DIVISION 17. BIRTHING CENTER SERVICES

1 TAC §354.1261, §354.1262

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Health and Human Services Commission (HHSC) proposes to repeal §354.1261, Benefits and Limitations for Birthing Center Services, and §354.1262, Conditions for Participation for Birthing Center Services.

Background and Justification

The proposed repeal of §354.1261, Benefits and Limitations for Birthing Center Services, and §354.1262, Conditions for Participation for Birthing Center Services, is a result of a federal mandate from the Centers for Medicare and Medicaid Services (CMS) that instructed Texas to discontinue Medicaid payments directly to birthing centers for services provided by the facility. This proposed repeal of the Medicaid health services rules and related reimbursement rules for birthing center services will bring HHSC into compliance with the federal mandate from CMS.

Section-by-Section Summary

The proposed repeal of §354.1261 and §354.1262 will discontinue Medicaid enrollment for birthing centers.

Fiscal Note

Thomas Suehs, Deputy Executive Commissioner for HHSC, has determined that during the first five-year period the repeals are in effect, there will be no significant fiscal impact as a result of the repeals. Birthing centers will no longer be able to enroll as Medicaid providers and receive direct Medicaid payments for birthing center services. Birthing centers will continue to be an eligible place of service. Even though the payments to birthing centers will be discontinued, the payments that were formerly paid to birthing centers will instead be paid directly to the certified nurse midwives, who will then reimburse the birthing centers for the use of the facilities as a result of the repeal of these rules. Therefore, the elimination of payments to birthing centers will be offset by the increase in rates to certified nurse midwives. This change in payment methodology is mandated by CMS.

Small and Micro-business Impact Analysis

The proposed repeals will not result in any significant fiscal implications for small businesses, local health and human service agencies or local governments. Those that provide birthing center services will no longer receive direct reimbursement from Medicaid and will instead bill certified nurse midwives for reimbursement for Medicaid-covered births. Billing the midwife for services could increase administrative costs. A certified nurse midwife may incur an administrative cost when complying with this rule because the midwife will have to reimburse the birthing centers for its Medicaid services. This change is required by federal regulation. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each of the first five years the repeals are in effect, the expected public benefit of the repeal of these rules is that HHSC will be in compliance with the CMS directive to discontinue direct payments to birthing centers.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Marianna Gomez, Policy Analyst for Acute Care Policy Development, Medicaid and CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H310, Austin, Texas 78708-5200; by fax to (512) 491-1953; or by e-mail to Marianna.Gomez@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The repeals are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. The amendment affects Texas Government Code, Chapter 531, and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§354.1261. Benefits and Limitations.

§354.1262. Conditions for Participation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902480
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.457

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.457, Fiscal Accountability, under Title 1, Part 15, Chapter 355, Subchapter D.

Background and Justification

Section 355.457 establishes the fiscal accountability process for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program. HHSC, under its authority and responsibility to administer and implement rates, proposes to update this rule to formalize certain limitations on hours allowed to be reported by ICF/MR providers (owners and related parties). Rates for this program are based on modeled rates, which incorporate cost information from ICF/MR provider cost reports. A modeled rate is considered fully-funded when the model is updated with current cost report information that has been adjusted for inflation to the rate period.

Limitations on allowable hours for owners and related parties are necessary to ensure that cost reports reflect only hours and associated costs that are reasonable and necessary in the normal conduct of operations. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious provider would pay for a given item or service. In determining the reasonableness of a given cost, the restraints or requirements imposed by arm's-length bargaining and the actions that a prudent person would take in similar circumstances are considered. Since related-party transactions are not constrained by the requirements imposed by arm's-length bargaining, additional tools are necessary to ensure that reported related-party hours are reasonable.

Currently, this rule specifies that allowable hours for owners and related parties are limited to the lesser of the actual hours worked or the hours for a comparable direct-care staff person assumed in the fully-funded model. The proposed rule amendment codifies current practice by adding language that results in a less stringent limitation on the determination of allowable owner and related-party hours.

Section-by-Section Summary

HHSC proposes to make the following amendments to §355.457:

Revise subsection (b)(2)(C)(ii) to delete references to related-party hours.

Add new subsection (b)(2)(C)(iii) to describe the process by which allowable reportable hours for direct-care workers are determined resulting in a less stringent limitation on the determination of allowable owner and related-party hours.

Add new subsection (b)(2)(C)(iv) to describe the process by which allowable direct-care trainer supervisor and direct-care worker supervisor hours are calculated.

Renumber current subsections (b)(2)(C)(iii) - (v) to (b)(2)(C)(v) - (vii).

Modify renumbered (b)(2)(C)(vii) to refer to clauses (ii) - (vi) instead of clauses (ii) - (iv).

Renumber rule references throughout the rule as a result of the renumbering.

Add headers to certain rule subsections, paragraphs and subparagraphs throughout the rule for added clarity.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider. This rule language reflects current practice and results in a less stringent limitation on the determination of allowable owner and related-party hours.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that the rule language regarding the maximum allowable hours for owners and related parties will be more specific in how the limits are calculated.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.457. Fiscal Accountability.

(a) General principles. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated facility reimbursement rates.

(b) Annual reporting. Fiscal accountability will consist of the annual reporting of direct service costs from all non-state operated providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(1) Direct-service costs. Direct service costs include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care staff, Qualified Mental Retardation Professional (QMRPs), as defined in 42 Code of Federal Regulations, Part 483, Subpart I, §483.430, registered nurses, and licensed vocational nurses. Direct service costs include: costs related to wages, benefits, payroll taxes, and contracts for direct services. Accrued leave (sick or annual) can only be considered a direct service cost if the employee has a right to the cash value of that leave upon termination.

(2) Provider responsibilities. The provider is responsible for submission of the fiscal accountability cost report to HHSC, and payment of amounts owed in accordance with subsection (c) of this section, regardless of whether the provider contracts with another entity for the management or operation of the ICF/MR.

(A) If the provider contracts with another entity for the management or operation of the ICF/MR, the provider must report the specific direct services costs of that entity as required in the cost report instructions and not the amount for which the provider is contracting for the entity's services.

(B) For staff whose duties include work other than the provision of direct services for the provider, time spent providing direct services and associated expenses may be reported as direct service costs if properly documented in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(C) Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs).

(i) Time sheet requirement. Owners and related-parties who provide multiple types of direct service, both direct care and indirect services and/or both direct hands-on support and first-level supervision of direct care workers must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to the compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(ii) Calculation of allowable hourly wage rate and benefits. Allowable [~~hours,~~] hourly wage rate and benefits for direct service work must be the lesser of the actual [~~hours worked,~~] hourly wage rate paid and benefits paid or the [~~hours,~~] hourly wage rate and benefits for a comparable direct care staff person assumed in the fully-funded model. The fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs) for the rate period.

(iii) Calculation of allowable hours for direct staff except for direct-care trainer supervisors. Allowable hours per unit of service for a direct service staff-type when the reported hours for the staff-type includes related-party hours, are determined as follows:

(I) Step 1. Determine the hours per unit of service for a comparable direct-service staff-type assumed in the fully-funded model as defined in clause (ii) of this subparagraph, adjusted for the provider's average Level of Need (LON) during the reporting period.

(II) Step 2. Determine the hours per unit of service encompassed by the 90th percentile in the array of hours per unit of service for comparable direct service staff-types as reported by those contracted providers not reporting any related-party hours for that staff-type, adjusted for the provider's average LON during the reporting period.

(III) Step 3. Determine the greater of Step 1 and Step 2.

(IV) Step 4. Determine the actual hours worked by the staff-type per unit of service.

(V) Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable hours per unit of service for the direct service staff-type.

(iv) Calculation of allowable hours for direct-care trainer supervisors. Allowable direct-care trainer supervisor hours when the reported direct-care trainer supervisor hours include related-party hours, are determined as follows:

(I) Step 1. Determine the ratio of direct-care trainer supervisor hours to direct-care trainer hours assumed in the fully-funded model as defined in clause (ii) of this subparagraph.

(II) Step 2. Determine the ratio of direct-care trainer supervisor hours to direct-care trainer hours encompassed by the 90th percentile in the array of ratios of direct-care trainer supervisor hours to direct-care trainer hours for those contracted providers not reporting any related-party direct-care trainer supervisor hours.

(III) Step 3. Determine the greater of Step 1 and Step 2.

(IV) Step 4. Determine the actual ratio of direct-care trainer supervisor hours to direct-care trainer hours.

(V) Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable ratio of direct-care trainer supervisor hours to allowable direct-care trainer hours reported. To determine the actual allowable direct-care trainer supervisor hours, multiply the allowable direct-care trainer hours by the allowable ratio of direct-care trainer supervisor hours to allowable direct-care trainer hours.

(v) [~~(iii)~~] Exception to related-party adjustment. If at least 40 percent of total labor hours in a specific related-party's direct service type were provided by non-related-parties, the related-party's hourly wage rate may be the higher of the model assumption for that direct service type described in clause (ii) of this subparagraph or the non-related party average for that direct service type, so long as the non-related party average does not exceed the related-party's actual hourly wage.

(vi) [~~(iv)~~] Maximum direct-care hours. During any single fiscal year, the sum of all direct care hours reported on ICF/MR cost report(s) for any individual owner or related party cannot exceed 2,600.

(vii) [~~(v)~~] Classification of hours over the limit. Hours, hourly wages and benefits above the limits described in clauses (ii) - (vi) [~~iv~~] of this subparagraph are to be reported as administrative hours, hourly wages and benefits.

(3) Placement of vendor hold for change of ownership and contract termination. The Department of Aging and Disability Services (DADS) will place a vendor hold on a prior owner at a change of ownership which results in the execution of a new provider agreement or a contract termination. The prior owner must submit a cost report to HHSC for the current reporting period. Upon receipt of an acceptable cost report and resolution of any outstanding balances, the vendor hold will be released.

(4) Ownership change or contract termination and failure to submit a cost report. Providers with an ownership change from one legal entity to a different legal entity or a contract termination that do not submit a cost report for the fiscal year of the ownership change or contract termination within 60 days of the change of ownership or contract termination are subject to recoupment of funds related to fiscal accountability as described in subsection (c)(1)(D) of this section. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in subsection (c)(1)(A) - (C) of this section. If an acceptable cost report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(5) Failure to submit a cost report. Providers that do not submit a cost report completed in accordance with all applicable rules and instructions within 60 days of the placement of a vendor hold due to the failure to submit the cost report are subject to an immediate recoupment of funds related to fiscal accountability as described in subsection (c)(1)(D) of this section. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in subsection (c)(1)(A) - (C) of this section. If an acceptable cost report is not received within 365 days of the due date, the recoupment will become permanent.

(6) Other applicable rules. For cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years the following applies:

(A) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(B) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(C) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(7) Field Audit and Desk Review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(8) Reviews of exclusions or adjustments. An ICF/MR provider who disagrees with HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(c) Fiscal accountability. HHSC will require providers to report all direct costs incurred in their annual fiscal year. HHSC will compare the reported direct service costs to the direct service cost component of the modeled rates.

(1) Fiscal accountability calculation. The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 85% of the direct service revenues will be required to pay to HHSC or its designee the difference between the direct service costs and 95% of the direct service revenues.

(C) Providers whose direct service costs are less than 90% but greater than or equal to 85% of the direct service revenues will be required to pay to HHSC or its designee 75% of the difference between the direct service costs and 90% of the direct service revenues.

(D) Providers who do not submit an acceptable cost report as described in subsection (b)(4) or (5) of this section will be assumed to have direct service costs equal to 65% of the direct services revenues and HHSC or its designee will recoup the difference between 65% of the direct services revenues and 95% of the direct service revenues, subject to the provisions of subsection (b)(4) or (5) of this section.

(2) Notification of recoupment. Providers will be notified, by certified mail, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in adjustments to the Cost Report as described in subsection (b)(7) of this section that changes the amount to be repaid to HHSC or its designee, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC or its designee will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter.

(3) Repayment. Repayment will be collected from the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(4) Repayment when ownership change or contract termination occurs. For providers undergoing an ownership change or contract termination, HHSC or its designee will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from paragraph (3) of this subsection will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC or its designee until repayment is made in full. The responsible entity for these contracts will be notified as described in paragraph (2) of this subsection prior to the recoupment of owed funds, placement of vendor hold and barring of new contracts.

(5) Aggregation.

(A) Definitions. The following words and terms have the following meanings when used in this paragraph.

(i) Aggregation-- [-] For an entity defined in clause (iii) of this subparagraph that controls, as defined in clause (iv) of this subparagraph, more than one ICF/MR component code, the process of determining compliance with the spending requirements detailed in paragraph (1) of this subsection for all component codes controlled by the entity in the aggregate rather than requiring each component code to meet its spending requirement individually. For commonly owned corporations defined in clause (ii) of this subparagraph, the process of determining compliance with the spending requirements detailed in paragraph (1) of this subsection for all component codes in the controlled small group in the aggregate rather than requiring each component code to meet its spending requirement individually. Corporations that do not meet the definitions under clauses (ii) - (iii) of this subparagraph are not eligible for aggregation.

(ii) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(iii) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(iv) Control--greater than 50 % ownership by the entity.

(B) Component Codes Included in Aggregation. If an entity controlling more than one ICF/MR component code or commonly owned corporations requests aggregation, compliance with the spending requirements will be evaluated in the aggregate for all ICF/MR component codes that the entity or commonly owned corporations controlled at the end of its fiscal year or at the effective date of the change of ownership or termination of its last ICF/MR contract.

(C) Aggregation Request. To exercise the aggregation option, the entity or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, that single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(D) Frequency of Aggregation Requests. The entity or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(E) Ownership Changes and Contract Terminations. ICF/MR contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per paragraph (1) of this subsection, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902479
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §§355.502, 355.503, 355.505, 355.507, 355.513

The Texas Health and Human Services Commission (HHSC) proposes new §355.502, Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers, and new §355.513, Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program, under Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 355. HHSC proposes to amend §355.503, Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; and §355.507, Reimbursement Methodology for the Medically Dependent Children Program, under 1 TAC, Part 15, Chapter 355.

Background and Justification

HHSC is concurrently repealing §355.9022, Reimbursement Methodology for Community-Based Services Provided to People Who Are Deaf-Blind with Multiple Disabilities (DBMD) and proposes to move certain parts of that rule's language to new §355.513 to allow easier public access to the rules as Subchapter E contains most of the community program rules. New §355.513 also adds a reimbursement methodology for rates for requisition fees in DBMD to provide payments for the cost of acquiring adaptive aids and minor home modifications. Requisition fees are currently not reimbursed in the DBMD program but are reimbursed in other §1915(c) waiver programs. The proposed repeal of §355.9022 is contemporaneously proposed elsewhere in this issue of the *Texas Register.*

The definitions for professional services (nursing, physical, occupational and speech therapy, behavioral supports, dietary services and audiology) in the various Department of Aging and Disability Services (DADS) §1915(c) waiver programs, including Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Consolidated Waiver Program (CWP), Home and Community-Based Services (HCS) waiver, Texas Home Living (TxHmL) waiver, Medically Dependent Children Program (MDCP), and DBMD, are identical. However, the rates vary: CBA, CLASS, CWP, MDCP and DBMD use one set of rates and HCS and TxHmL use another set.

The current difference in nursing rates between HCS and TxHmL and the remaining DADS §1915(c) waiver programs was justified in the past because the billing guidelines for CBA, CLASS, CWP, MDCP, and DBMD differed from those for HCS and TxHmL. DADS is revising the HCS and TxHmL nursing billing guidelines to match the CBA, CLASS, CWP, MDCP and DBMD guidelines effective September 1, 2009. When data become available for HCS and TxHmL under the new billing guidelines, nursing rates will be calculated using data from all §1915(c) waiver program cost reports.

The difference in rates for other (non-nursing) professional services is due to the lack of robust cost data on these services in CBA, CLASS, CWP, DBMD, and MDCP. The vast majority of units of service for these services are provided in HCS and TxHmL. As a result of using the HCS and TxHmL database to set rates for the non-nursing professional services in CBA, CLASS, CWP, and DBMD, the rates for these services will increase to match the rates for HCS and TxHmL.

New §355.502 and §355.513, and the proposed amendments to §§355.503, 355.505, and 355.507 will give HHSC the authority to combine allowable costs per unit of service for professional services with allowable costs per unit of service for identical professional services in all DADS §1915(c) waiver programs into a single database for use in determining rates for these services. These proposals will move HHSC closer to achieving its goal of standardizing professional service rates in community-based programs.

The amendment to §355.505 adds a reimbursement methodology for day activity and health services (DAHS.) DADS is implementing DAHS as an option in CLASS effective September 1, 2009.

Section-by-Section Summary

HHSC proposes new §355.502 as follows:

Propose subsection (a) to apply the general principles of cost determination to the reimbursement methodology for professional services.

Propose subsection (b) to define professional services.

Propose subsection (c) to provide the method for calculating rates for professional services. Subsection (c)(1) gives the method for calculating rates when a sufficient, reliable database exists for the service in a program; subsection (c)(2) gives the method for calculating rates when a sufficient, reliable database does not exist.

Propose subsection (d) to provide the method for calculating rates for specialized nursing services provided by a registered nurse (RN) or a licensed vocational nurse (LVN).

HHSC proposes amendments to §355.503 as follows:

Combine subsections (a) and (b) and renumber the remaining subsections of §355.505.

Revise the name of the section to "Reimbursement Methodology for the Community-Based Alternatives Waiver Program."

Renumber subsection (d)(1) as (c)(1) and change the reimbursement methodology for professionals to utilize cost per unit of services. This change reflects the new reimbursement methodology for calculating rates for professional services described in §355.502, relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers.

Renumber subsection (d)(1)(F) as (c)(1)(F) and remove language requiring the costs for these services to be arrayed to calculate a separate rate for CBA. Also, add a reference to new §355.502, relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers.

Delete subsection (d)(6) to remove the language for the reimbursement methodology for specialized nursing. This language is being moved to §355.502, relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers.

Other minor, non-substantive changes are made for clarity.

HHSC proposes amendments to §355.505 as follows:

Combine subsections (a) and (b) and renumber the remaining subsections of §355.505 accordingly.

Renumber subsection (d)(1) as (c)(1); delete the term "psychological services" and replace it with "behavioral support" to reflect a change in the name of the service. In addition, add day activity and health services because this service is being added to the CLASS waiver effective September 1, 2009. Finally, add auditory integration training/auditory enhancement training and nutritional services to the list of services for which reimbursement will be determined on a fee-for-service basis. These services are professional services and are now included in the reimbursement methodology described in new §355.502, relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers.

Renumber subsection (d)(4)(A) as (c)(4)(A); delete the term "psychological services" and replace it with "behavioral support." Also, add auditory integration training/auditory enhancement training and nutritional services.

Add subsection (c)(4)(A)(v) to require the allocation of administrative and facility costs across services on a pro rata basis.

Renumber subsection (d)(4)(A)(vi) as (c)(4)(A)(vii); add language for calculating adjusted allowable costs. Also, add a reference to new §355.502, relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers.

Delete subsection (d)(4)(A)(vi)(I) - (III). The proposed amendment moves the reimbursement methodology for professional services to subsection (d)(4)(A)(vi), now (c)(4)(A)(vii); the reimbursement methodology for specialized nursing has been moved to §355.502, relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers.

Add subsection (c)(4)(D) to reference the reimbursement methodology for day activity and health services at §355.6907,

Relating to Reimbursement Methodology for Day Activity and Health Services.

Renumber subsection (d)(5) as (c)(5); add continued family services.

Other minor, non-substantive changes were made for clarity.

HHSC proposes amendments to §355.507 as follows:

Revise subsection (b) to remove language for calculating nursing rates prior to September 1, 2007, rates for independent nurses, and rates for personal assistance services (PAS); add a reference to new §355.502 (relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers).

Add new subsection (c) to add language for calculating PAS rates and renumber the remaining subsections accordingly.

Delete subsection (e) to remove the language relating to pro forma reimbursement determination. Pro forma reimbursement methodology is in §355.105(h), relating to General Reporting and Documentation Requirements, Methods, and Procedures, which is applicable to all programs.

HHSC proposes new §355.513 as follows:

The language from repealed §355.9022, Reimbursement Methodology for Community-Based Services Provided to People Who Are Deaf-Blind with Multiple Disabilities, is proposed in subsections (a) through (h) with the following revisions:

The rules now state that services without sufficient, reliable cost data will be developed by using rates from similar services from other Medicaid programs.

Add new language that HHSC will collect cost reports if HHSC deems it appropriate.

The rule revises the language for calculating adjusted allowable costs and adds a reference to new §355.502, relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers.

Delete the language regarding specialized nursing rates and add reimbursement methodology for requisition fees.

Other minor, non-substantive changes are made for clarity.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that, during the first five-year period the amended rule is in effect, there will be a fiscal impact to state government, as result of increasing the non-nursing professional services in CBA, CLASS, CWP, and DBMD, and adding requisition fees to DBMD and MDCP, of $116,810 for state fiscal year (FY) 2010; $147,373 for FY 2011; $147,301 for FY 2012; $147,301 for FY 2013; and $147,301 for FY 2014. There will be no fiscal impact from adding DAHS services to the CLASS program as consumers in CLASS are already receiving DAHS through the state plan program. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that the same rates will be paid for similar professional services across §1915(c) waiver programs, requisition fees will be made available in the DBMD and MDCP programs, and DAHS services will be made available to CLASS consumers. The rule amendment will also relocate the DBMD rules to a subchapter with similar rules and will, thus, be more accessible to the public.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431. Written comments on the repeal may be submitted to Ms. Hambrick by facsimile at (512) 491-1998, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendments and new rules are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC to with broad rulemaking authority; and the Human Resource Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The amendments and new rules affect the Human Resources Code Chapter 32, and the Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.502. Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers.

(a) General requirements. The general principles of cost determination as specified in §355.101 of this title (relating to Introduction) applies to these rules.

(b) Professional Services. Professional services include nursing services provided by a registered nurse (RN) or a licensed vocational nurse (LVN) (including Adjunct Support and Respite in the Medically Dependent Children Program), physical therapy, occupational therapy, speech/language therapy, dietary services (including nutritional services), audiology services (including auditory integration training/auditory enhancement training), and behavioral support services.

(c) Professional Services Rates. The rates for professional services are calculated in the following manner:

(1) If there is sufficient reliable cost report data from which to determine reimbursements, rates are calculated in the following manner.

(A) An allowable cost per unit of service for each cost report is calculated in accordance with the specific methodology for each Home and Community-Based Services (HCBS) waiver.

(B) The allowable cost per unit of service for each cost report for all HCBS waivers is combined into an array.

(C) The array of allowable costs per unit of service for all HCBS waivers is weighted by the number of units of service, and the median cost per unit of service is calculated.

(2) If there is not sufficient, reliable cost report data from which to determine reimbursements, reimbursements will be developed by using pro forma costing. This approach involves using historical costs of delivering similar services, where appropriate data are available, and estimating the basic types and costs of products and services necessary to deliver services meeting federal and state requirements.

(d) Specialized nursing rates. Specialized nursing rates will be determined for both RN and LVN services by multiplying the RN and LVN rates determined in subsection (b) of this section by 1.15. The specialized nursing rate is paid when a client requires, as determined by a physician, daily skilled nursing to cleanse, dress, and suction a tracheostomy or daily skilled nursing assistance with ventilator or respirator care. The client must be unable to do self-care and require the assistance of a nurse for the ventilator, respirator, or tracheostomy care.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program [~~and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs~~].

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

[~~(b)~~] [~~General.~~] Texas Medicaid contracted providers will be reimbursed for waiver services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, Texas Medicaid contracted providers will be reimbursed for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant and is reimbursed by a one-time administrative expense fee which is not included in the waiver services but will be paid from Medicaid administrative funds.

(b) [~~(c)~~] Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys; cost report data from other similar programs, consultation with other service providers [~~and/~~]or professionals experienced in delivering contracted services; and other sources.

(c) [~~(d)~~] Waiver reimbursement determination. Recommended reimbursements are determined in the following manner:[~~.~~]

(1) Unit of service reimbursement. Reimbursement for personal assistance services and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, and speech pathology[~~, and in-home respite care services~~] will be determined on a fee-for-service basis in the following manner:[~~.~~]

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

(C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech pathology, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost [~~costs~~] per unit of service, for each contracted provider cost report is multiplied by 1.044. This adjusted [~~are arrayed. The units of service for each contracted provider in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044. The~~] allowable cost [~~costs~~] per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers) [~~the weighted median cost per unit of service~~].

(G) For personal assistance services, two cost areas are created:

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) Another attendant cost area is created which includes the other personal attendant services costs not included in subparagraph (G)(i) of this paragraph as determined in subparagraphs (A)

- (E) of this paragraph. An allowable cost per unit of service is determined for each contracted provider cost report for the other attendant cost area. The allowable cost [~~costs~~] per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(iii) The attendant cost area and the other attendant cost area are summed to determine the personal assistance services cost per unit of service.

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care will be determined as a per day reimbursement using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from other similar programs, consultation with other service providers [~~and/~~]or professionals experienced in delivering contracted services; and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(B) The reimbursement for Assisted Living/Residential Care (AL/RC) will be determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(F)(iii) of this title (relating to Reimbursement Methodology for Residential Care). The per day reimbursement for attendant care will be determined, based upon client need for attendant care into six levels of care. A total reimbursement amount will be calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments. The room and board payment is paid to the provider by the client from the client's Supplemental Security Income (SSI), less a personal needs allowance. When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility will be based on the amount determined for the Nursing Facility case mix class into which the CBA participant is classified.

(D) The reimbursement for Personal Care III will be composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center will be determined by modeling the cost of the minimum required staffing for the Personal Care III setting, as specified by the Department of Aging and Disability Services, and using staff costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center will be equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care III rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-on's to the Personal Care III rates.

(3) Monthly reimbursement ceilings. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with 1 TAC §355.510 (relating to Reimbursement Methodology for Emergency Response Services (ERS)). The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with 1 TAC §355.511 (relating to Reimbursement Methodology for Home-Delivered Meals).

(4) Requisition fees. Requisition fees are reimbursements paid to the CBA home and community support services contracted providers for their efforts in acquiring adaptive aids and minor home modifications for CBA participants. Reimbursement for adaptive aids and minor home modifications will vary based on the actual cost of the adaptive aid and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys; cost report data from other similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

~~[(6) Specialized nursing reimbursement add-on. A specialized nursing reimbursement add-on will be paid in addition to the unit-of-service reimbursements for skilled nursing services provided by an RN or by an LVN. The specialized nursing reimbursement add-on is paid when a client requires, as determined by a physician, daily skilled nursing to cleanse, dress, and suction a tracheostomy or daily skilled nursing assistance with ventilator or respirator care. The client must be unable to do self-care and require the assistance of a nurse for the ventilator, respirator, or tracheostomy care. This specialized nursing reimbursement add-on will be determined in accordance with subsection (c) of this section]~~

(6) [~~(7)~~] Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) [~~(c)~~] Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(e) [~~(f)~~] Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, all contracted providers must submit a cost report unless the number of days between the date the first Texas Department of Aging and Disability Services (DADS) client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. An AL/RC provider may also be excused from submitting a cost report if the total number of days serving AL/RC or Residential Care residents is 366 or fewer during its fiscal year. Requests to be excused from submitting a cost report must be received by HHSC before the due date of the cost report.

(3) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating

to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement.

(4) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(5) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title [~~(relating to Specifications for Allowable and Unallowable Costs)~~].

(f) [~~(g)~~] Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) [~~(h)~~] Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

§355.505. Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

[~~(b)~~] [~~General.~~] Texas Medicaid contracted providers will be reimbursed for waiver services provided to Medicaid-eligible persons with related conditions (waiver services). Additionally, Texas Medicaid contracted providers will be reimbursed for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant and is reimbursed by a one-time administrative expense fee which is not included in the waiver services but will be paid from Medicaid administrative funds.

(b) [~~(c)~~] Reporting of cost.

(1) Providers must follow the cost reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Number of cost reports to be submitted. Contracted providers are required to submit one cost report per legal entity if all contracts under the legal entity participate in the attendant compensation rate enhancement in accordance with §355.112 of this title (relating to Attendant Compensation Rate Enhancement). Contracted providers who operate both contracts that are participating in the attendant compensation rate enhancement program and contracts that are not participating in the attendant compensation rate enhancement program must file two separate cost reports per legal entity, one cost report for the contracts that are participating in the attendant compensation rate enhancement program and one cost report for the contracts that are not participating in the attendant compensation rate enhancement. All legal entities must submit a cost report unless the number of days between the date the legal entity's first Texas Department of Aging and Disability Services (DADS) client received services and the legal entity's fiscal year end is 30 days or fewer.

(3) A provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by HHSC Rate Analysis before the due date of the cost report.

(c) [~~(d)~~] Waiver reimbursement determination methodology.

(1) Unit of service reimbursement or reimbursement ceiling by unit of service. Reimbursement or reimbursement ceilings for related-conditions waiver services, habilitation, nursing services provided by a registered nurse (RN) [~~an RN~~], nursing services [~~facilities~~] provided by a licensed vocational nurse (LVN) [~~an LVN~~], physical therapy, occupational therapy, speech pathology, behavioral support, auditory integration training/auditory enhancement training, nutritional services, day activity and health services, [~~and psychological~~] and respite care services will be determined on a fee-for-service basis. These services are provided under §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(2) Monthly reimbursement. The reimbursement for [~~the related-conditions~~] case management waiver service will be determined as a monthly reimbursement. This service is provided under the §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(4) Reimbursement determination. Recommended unit of service reimbursements are determined in the following manner.

(A) Unit of service reimbursement for habilitation, and cost per unit of service for nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech pathology, behavioral support services, auditory integration training/auditory enhancement training, and nutritional services [~~and psychological services~~], are determined in the following manner:

(i) The total allowable cost for each contracted provider cost report [~~Total allowable costs for each provider~~] will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) The total allowable cost is [~~Total allowable costs are~~] reduced by the amount of the administrative expense fee and requisition fee revenues accrued for the reporting period.

(iii) Each provider's total allowable cost [~~costs~~], excluding depreciation and mortgage interest, is [~~are~~] projected from the historical cost reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices).

(iv) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Medicare contributions, Workers' compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(v) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(vi) [~~(v)~~] Each provider's projected total allowable cost is [~~costs are~~] divided by the number of [~~monthly~~] units of service to determine the projected cost per unit [~~client month~~] of service.

(vii) [~~(vi)~~] For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech pathology, behavioral support services, auditory integration training/auditory enhancement training, and nutritional services, the projected cost per unit of service, for each provider is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers). [~~and psychological services:~~]

~~*[(I)* An allowable cost per unit of service is calculated for each service. The allowable costs per unit of service for each contracted provider are arrayed and weighted by the number of units of service, and the median cost per unit of service is calculated. The allowable costs per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining the median cost per unit of service.]~~

~~*[(II)* The median cost per unit of service for each waiver service is multiplied by 1.044.]~~

~~*[(III)* Specialized nursing reimbursement add-on. A specialized nursing reimbursement add-on will be paid in addition to the unit-of-service reimbursements for skilled nursing services provided by an RN or by an LVN. The specialized nursing reimbursement add-on is paid when a client requires, as determined by a physician, daily skilled nursing to cleanse, dress, and suction a tracheostomy or daily skilled nursing assistance with ventilator or respirator care. The client must be unable to do self-care and require the assistance of a nurse for the ventilator, respirator, or tracheostomy care. This specialized nursing reimbursement add-on will be determined in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).]~~

(viii) [~~(vii)~~] For habilitation services two cost areas are created:

(I) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(II) Another attendant cost area is created which includes the other habilitation services costs not included in subclause (I) of this clause as determined in clauses (i) - (v) of this subparagraph to create an other attendant cost area. An allowable cost per unit of service is calculated for the other habilitation cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed and weighted by the number of units of service, and the median cost per unit of service is calculated. The median cost per unit of service is multiplied by 1.044.

(III) The attendant cost area and the other attendant cost area are summed to determine the habilitation attendant cost per unit of service.

(B) Unit of service reimbursement and reimbursement ceilings for respite care services are determined in the following manner:

(i) For in-home respite care services, a unit of service reimbursement is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar type services, and other relevant sources.

(ii) For out-of-home respite care services, a unit of service reimbursement ceiling is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar type services, and other relevant sources.

(C) The monthly reimbursement for case management services is determined in the following manner:

(i) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) Total allowable costs are reduced by the amount of administrative expense fee revenues reported.

(iii) Each provider's total allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices).

(iv) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Medicare contributions, Workers' compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(v) Each provider's projected total allowable costs are divided by the number of monthly units of service to determine the projected cost per client month of service.

(vi) Each provider's projected cost per client month of service is arrayed from low to high and weighted by the number of units of service and the median cost per client month of service is calculated.

(vii) The median projected cost per client month of service is multiplied by 1.044.

(D) The unit of service reimbursement for day activity and health services is determined in accordance with §355.6907 of this title (relating to Reimbursement Methodology for Day Activity and Health Services).

(E) [~~(D)~~] HHSC also adjusts reimbursement according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs) if new legislation, regulations, or economic factors affect costs.

(5) The reimbursement for support family services and continued family services will be determined as a per day rate using a method based on modeled costs which are developed by using data from surveys, cost report data from other similar programs, payment rates from other similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services, or other sources as determined appropriate by HHSC. The per day rate will have two parts, one part for the child placing agency and one part for the support family.

(d) [~~(e)~~] Administrative expense fee determination methodology.

(1) One-time administrative expense fee. Reimbursement for the pre-enrollment assessment and care planning process required to determine eligibility for the waiver program will be provided as a one-time administrative expense fee.

(2) Administrative expense fee determination process. The recommended administrative expense fee is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar services, and other relevant sources.

(e) [~~(f)~~] Requisition fees. Requisition fees are reimbursements paid to the CLASS direct service agency contracted providers for their efforts in acquiring adaptive aids and minor home modifications for CLASS participants. Reimbursement for adaptive aids and minor home modifications will vary based on the actual cost of the adaptive aid and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(f) [~~(g)~~] Allowable and unallowable costs.

(1) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs) as well as the following provisions.

(2) Participant room and board expenses are not allowable, except for those related to respite care.

(3) The cost of adaptive aids and home modifications is not allowable. Allowable labor costs associated with acquiring adaptive aids and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed [~~through~~] a voucher payment system is unallowable. Refer to §355.103(b)(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) [~~(h)~~] Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(h) [~~(i)~~] Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(i) [~~(j)~~] Reviews and field audits of cost reports. Desk reviews or field audits are performed on all contracted providers' cost reports. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(j) [~~(k)~~] Reporting requirements. The program director's full salary is to be reported on the line item of the cost report designated for the director.

§355.507. Reimbursement Methodology for the Medically Dependent Children Program.

(a) The Texas Health and Human Services Commission (HHSC) determines payment rates for qualified contracted providers

for the provision of services in the Medically Dependent Children Program (MDCP). HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) The rates for nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) will be determined in accordance with §355.502 of this title (relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers).

~~[(b) Effective September 1, 2007, rates for home-and-community-support-service agency (HCSS) registered nurse (RN), HCSS agency licensed vocational nurse (LVN), and HCSS agency personal assistance services (PAS) (with delegation of the service by an RN and without delegation of the service by an RN)), will be based upon the Community-Based Alternatives (CBA) HCSS-approved rates for RN and LVN services in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and non-participant PAS in accordance with §355.112(l) of this title (relating to Attendant Compensation Rate Enhancement). However, if the rates in effect for these MDCP services on August 31, 2007, are greater than the approved rates for the CBA HCSS for RN, LVN, and non-participant PAS, the higher MDCP rates will remain in effect on September 1, 2007. Effective September 1, 2007, the reimbursement rate for independent RNs will be equal to 80 percent of the MDCP rate for HCSS agency RNs, and the reimbursement rate for independent LVNs will be equal to 80 percent of the MDCP rate for HCSS agency LVNs.]~~

(c) The rates for personal assistance services (PAS) (with delegation of the service by an RN and without delegation of the service by an RN), will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and §355.112(l) of this title (relating to Attendant Compensation Rate Enhancement).

(d) [~~(c)~~] The rate ceiling for camp services will be equivalent to the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate. Actual payments for this service will be the lesser of the rate ceiling or the actual cost of the camp.

(e) [~~(d)~~] Facility-based respite care rates are determined on a 24-hour basis. The rates for facility-based respite care are calculated at 77 percent of the daily nursing facility base rates by level of care. The base rates used in this calculation do not include nursing facility rate add-ons.

~~[(e) Payment rates may be determined in the future on a pro forma basis in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).]~~

(f) The following sections of this title will apply to cost reports or surveys required to obtain the necessary information to determine new payment rates: §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

§355.513. Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program.

(a) General information. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). HHSC will reimburse qualified Texas Medicaid contracted providers for waiver services provided to individuals who are deaf-blind with multiple disabilities.

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to set reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using rates for similar services from other Medicaid programs; data from surveys; cost report data from other similar programs; consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver rate determination methodology. If HHSC deems it appropriate to require contracted providers to submit a cost report, recommended reimbursements for waiver services will be determined on a fee-for-service basis in the following manner for each of the services provided:

(1) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(2) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(3) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(4) Allowable administrative and overall facility/operations costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's service units reported to the amount of total waiver service units reported. Service-specific facility and operations costs for out-of-home assisted living, out-of-home respite, and habilitation day services will be directly charged to the specific waiver service.

(5) For professional services, including physical therapy, occupational therapy, speech/hearing/language, case management, nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), dietary services, auditory services and behavioral support services, an allowable cost per unit of service is calculated for each contracted provider cost report in accordance with paragraphs (1) - (4) of this subsection. The allowable costs per unit of service for each contracted provider cost report is multiplied by 1.044. This adjusted allowable costs per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of

this title (relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers).

(6) Requisition fees. Requisition fees are reimbursements paid to the Deaf-Blind Multiple Disabilities (DBMD) contracted providers for their efforts in acquiring adaptive aids and minor home modifications for DBMD participants. Reimbursement for adaptive aids and minor home modifications will vary based on the actual cost of the adaptive aid and minor home modification. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers or professionals experienced in delivering contracted services; or other sources.

(7) For habilitation day, residential habilitation (less than 24-hour and 24-hour residential habilitation), assisted living (24-hour supervision and less than 24-hour supervision), and intervener services, two cost areas are created:

(A) The attendant cost area, which includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(B) An "other direct care" cost area, which includes costs for services not included in subparagraph (A) of this paragraph as determined in paragraphs (1) - (4) of this subsection. An allowable cost per unit of service is determined for each contracted provider cost report for the other direct care cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(C) The attendant cost area and the other direct care cost area are summed to determine the cost per unit of service.

(D) The room and board payments for waiver clients receiving assisted living services are covered in the reimbursement for these services and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(8) The lifetime ceiling per client for minor home modifications is determined from sources other than cost reports for this program. The annual ceiling per client for adaptive aids is determined from sources other than cost reports for this program.

(9) Pre-enrollment assessment services are based on the hourly case management reimbursement.

(10) HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title.

(e) Reporting of cost.

(1) Cost-reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, all contracted providers must submit a cost report unless the number of days between the date the first Department of Aging and Disabilities Services (DADS) client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. A DBMD Waiver contracted provider may also be excused from submitting a cost report if the total number of DBMD clients served during the reporting period is three or less. Requests to be excused from submitting a cost report must be received by HHSC's Rate Analysis Department before the due date of the cost report.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost-report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers, in order to ensure the database reflects costs and other information necessary for the provision of services and is consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) Material pertinent to proposed reimbursements and made available to the public shall include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B) of this paragraph.

(4) Allowable and unallowable costs. Providers must follow the guidelines specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs), in determining whether a cost is allowable or unallowable. In addition, providers must adhere to the following principles:

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids is not allowable for cost-reporting purposes.

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of field audits are determined by HHSC staff to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
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Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.722

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.722, Reporting Costs by Home and Community-based Services (HCS) Providers, under Title 1, Part 15, Chapter 355, Subchapter F.

Background and Justification

Section 355.722 establishes the fiscal accountability process for the Home and Community-based Services (HCS) waiver program. HHSC, under its authority and responsibility to administer and implement rates, proposes to update this rule to formalize certain limitations on hours allowed to be reported by HCS providers for owners and related parties performing direct service activities. Rates for this program are based on modeled rates, which incorporate cost information from HCS provider cost reports. A modeled rate is considered fully funded when the model is updated with current cost report information that has been adjusted for inflation to the rate period.

Limitations on allowable hours for owners and related parties are necessary to ensure that cost reports reflect only hours and associated costs that are reasonable and necessary in the normal conduct of operations. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious provider would pay for a given item or service. In determining the reasonableness of a given cost, the restraints or requirements imposed by arm's-length bargaining and the actions that a prudent person would take in similar circumstances are considered. Since related-party transactions are not constrained by the requirements imposed by arm's-length bargaining, additional tools are necessary to ensure that reported related-party hours are reasonable.

Currently, this rule specifies that allowable hours for owners and related parties are limited to the lesser of the actual hours worked or the hours for a comparable direct-care staff person assumed in the fully-funded model. The proposed rule amendment codifies current practice, which differs from the current rule, by adding language that results in a less stringent limitation on the determination of allowable hours for owners and related parties performing direct-service activities.

Section-by-Section Summary

HHSC proposes to make the following amendments to §355.722:

Revise subsection (h)(2) to delete references to related-party hours.

Add new subsection (h)(3) to describe the process by which allowable hours for related-party direct-care workers are determined.

Add new subsection (h)(4) to describe the process by which allowable related-party direct-care trainer supervisor and direct-care worker supervisor hours are calculated.

Add new subsection (h)(5), which indicates that for staff-types for which representative non-related-party hours and units of service data are not available, allowable related-party hours are determined using a pro forma approach, and renumber subsequent paragraphs.

Renumber current subsections (h)(3) - (5) as subsections (h)(6) - (8).

Modify renumbered (h)(8) to refer to paragraphs (2) - (7) instead of paragraphs (2) - (4).

Renumber rule references throughout the rule as a result of the renumbering.

Add headers to certain rule subsections and paragraphs throughout the rule for added clarity.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider. This rule language reflects current practice and results in a less stringent limitation on the determination of allowable owner and related-party hours.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that the rule language regarding the maximum allowable hours for owners and related parties will be more specific in how the limits are calculated.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.722. Reporting Costs by Home and Community-based Services (HCS) Providers.

(a) Submittal of cost reports. On an annual basis, all providers must submit cost reports as directed by HHSC or its designee and in accordance with this subchapter. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Direct service costs. Direct service costs are defined to include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care workers, registered nurses, licensed vocational nurses, and other personnel who provide activities of daily living training and clinical program services. Direct service costs include: costs related to wages, benefits, payroll taxes, and contracts for direct services. Accrued leave (sick or vacation) can only be considered a direct service cost if the employee has a right to a cash value of that leave upon termination.

(2) Staff who provide both direct and other than direct services. For staff whose duties include work other than the provision of direct services for the provider, time spent providing direct services and associated expenses may be reported as direct service costs if properly documented in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) Providers must report the following costs:

(A) Staff wages related to the delivery of direct services including residential assistance, day habilitation services, and the direct supervision of the delivery of these services.

(B) These costs may be either the provider's actual expense or contracted expenditures.

(b) Reviews of exclusions or adjustments. A provider who disagrees with HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(c) Field audit and desk review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(d) Notification of exclusions and adjustments. HHSC will notify a provider of the results of a desk review or field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(e) Cost reporting guidelines. Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(f) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(g) Revenues. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) Related parties. Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs).

(1) Time sheet requirement. Owners and related parties who provide multiple types of direct service, both direct care and indirect services and/or both direct hands-on support and first-level supervision of direct care workers must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to the compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Calculation of allowable hourly wage rate and benefits. Allowable [~~hours,~~] hourly wage rate and benefits for direct service work must be the lesser of the actual [~~hours worked,~~] hourly wage rate paid and benefits paid or the [~~hours,~~] hourly wage rate and benefits for a comparable direct care staff person assumed in the fully-funded model. The fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs) for the rate period.

(3) Calculation of allowable hours for direct staff except for direct-care trainer supervisors and direct-care worker supervisors.

Allowable hours per unit of service for a direct service staff-type when the reported hours for the staff-type include related-party hours, are determined as follows:

(A) Step 1. Determine the hours per unit of service for a comparable direct service staff-type assumed in the fully-funded model as defined in paragraph (2) of this subsection, adjusted for the provider's average Level of Need (LON) during the reporting period.

(B) Step 2. Determine the hours per unit of service encompassed by the 90th percentile in the array of hours per unit of service for comparable direct service staff-types as reported by those contracted providers not reporting any related-party hours for that staff-type, adjusted for the provider's average LON during the reporting period.

(C) Step 3. Determine the greater of Step 1 and Step 2.

(D) Step 4. Determine the actual hours worked by the staff-type per unit of service.

(E) Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable hours per unit of service for the direct service staff-type in question.

(4) Calculation of allowable hours for direct-care trainer supervisors or direct-care worker supervisors. Allowable direct-care trainer supervisor or direct-care worker supervisor hours when the reported direct-care trainer supervisor or direct-care worker supervisor hours include related-party hours, are determined separately as follows:

(A) Step 1. Determine the ratio of direct-care trainer supervisor or direct-care worker supervisor hours to direct-care trainer or direct-care worker hours assumed in the fully-funded model as defined in paragraph (2) of this subsection.

(B) Step 2. Determine the ratio of direct-care trainer or direct-care worker supervisor hours to direct-care trainer or direct-care worker hours encompassed by the 90th percentile in the array of ratios of direct-care trainer or direct-care worker supervisor hours to direct-care trainer or direct-care worker hours for those contracted providers not reporting any related-party direct-care trainer or direct-care worker supervisor hours.

(C) Step 3. Determine the greater of Step 1 and Step 2.

(D) Step 4. Determine the actual ratio of direct-care trainer or direct-care worker supervisor hours to direct-care trainer or direct-care worker hours.

(E) Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable ratio of direct-care trainer or direct-care worker supervisor hours to allowable direct-care trainer or direct-care worker hours reported. To determine the actual allowable direct-care trainer supervisor or direct-care worker supervisor hours, multiply the allowable direct-care trainer or direct-care worker hours by the allowable ratio of direct-care trainer supervisor or direct-care worker supervisor hours to allowable direct-care trainer or direct-care worker hours.

(5) Calculation of allowable hours for other staff types. For staff types where representative hours and units of service data are not available, allowable related-party hours are determined using a pro forma approach in which factors such as hours assumed in the fully-funded model, median non-related party hours reported, and non-related party hours or staff ratios for similar staff types are considered.

(6) [~~(3)~~] Exception to related-party adjustment. If at least 40 percent of total labor hours in a specific related-party's direct service type were provided by non-related-parties, the related-party's hourly wage rate may be the higher of the model assumption for that direct service type described in paragraph (2) of this subsection or the non-related party average for that direct service type, so long as the non-related party average does not exceed the related-party's actual hourly wage.

(7) [~~(4)~~] Maximum direct-care hours. During any single fiscal year, the sum of all direct care hours reported on HCS cost report(s) for any individual owner or related party cannot exceed 2,600.

(8) [~~(5)~~] Classification of hours over the limit. Hours, hourly wages and benefits above the limits described in paragraphs (2) - (7) [~~(4)~~] of this subsection are to be reported as administrative hours, hourly wages and benefits.

(i) Adjusting reported cost. Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(j) Fiscal Accountability.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the reimbursement rates.

(2) Annual reporting. Fiscal accountability will consist of the annual reporting of the direct service costs including wages, and benefits, from all providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(A) The Department of Aging and Disability Services (DADS) will place a vendor hold on payments to a provider whose provider agreement is being assigned or terminated. The provider will submit a cost report for the current reporting period to HHSC. Upon receipt of an acceptable cost report and repayment of any amounts due in accordance with this section, the vendor hold will be released.

(B) Providers that do not submit a cost report completed in accordance with all applicable rules and instructions within 60 days of the placement of a vendor hold due to the failure to submit the cost report are subject to an immediate recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in paragraphs (5) - (7) of this subsection. If an acceptable cost report is not received within 365 days of the due date, the recoupment will become permanent.

(C) Providers with an ownership change from one legal entity to a different legal entity or a contract termination that do not submit a cost report for the fiscal year of the ownership change or contract termination within 60 days of the change of ownership or contract termination are subject to recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in paragraphs (5) - (7) of this subsection. If an acceptable cost report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(3) Comparison of direct-service costs to total direct-service revenue. HHSC will require providers to report all direct costs

incurred on an annual fiscal year basis. HHSC will compare the reported direct service costs to the total direct service revenue.

(4) Calculation of direct-service revenues and fiscal accountability repayment. Direct Service Revenues are calculated by multiplying the number of units eligible for payment that have been paid for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 90% but greater than or equal to 85% of the direct service revenues will be required to pay to DADS 50% of the difference between the direct service costs and 90% of the direct service revenues.

(C) Providers whose direct service costs are less than 85% but greater than or equal to 80% of the direct service revenues will be required to pay to DADS 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(D) Providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to DADS the difference between the direct service costs and 95% of the direct service revenues.

(E) Providers who do not submit a cost report as described in paragraph (2)(B) or (C) of this subsection will be assumed to have direct service costs equal to 65% of the direct services revenues and will be required to pay to DADS the difference between 65% of the direct services revenues and 95% of the direct service revenues, subject to the provisions of paragraph (2)(B) or (C) of this subsection.

(5) Notification of recoupment. Providers [~~Where applicable, providers~~] will be notified, by certified mail, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in adjustments to the cost report as described in subsection (a) of this section that change the amount to be repaid to HHSC or its designee, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. Providers will submit the repayment amount within 60 days of notification.

(6) Repayment. Repayment will be made by the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(7) Providers required to repay revenues to DADS will be jointly and severally liable for any repayment. DADS will apply a vendor hold on Medicaid payments to a provider for not making the payment to DADS within 60 days of receiving notice.

(8) Aggregation.

(A) Definitions. The following words and terms have the following meanings when used in this paragraph.

(i) Aggregation-- [-] For an entity defined in clause (iii) of this subparagraph that controls, as defined in clause (iv) of this subparagraph, more than one HCS component code, the process of determining compliance with the spending requirements detailed in paragraph (4) of this subsection for all component codes controlled by the entity in the aggregate rather than requiring each component code to meet its spending requirement individually. For commonly owned corporations defined in clause (ii) of this subparagraph, the process of determining compliance with the spending requirements detailed in paragraph (4) of this subsection for all component codes in the controlled small group in the aggregate rather than requiring each component code to meet its spending requirement individually. Corporations that do not meet the definitions under clauses (ii) - (iii) of this subparagraph are not eligible for aggregation.

(ii) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(iii) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(iv) Control--greater than 50% ownership by the entity.

(B) Component Codes Included in Aggregation. If an entity controlling more than one HCS component code or commonly owned corporations requests aggregation, compliance with the spending requirements will be evaluated in the aggregate for all HCS component codes that the entity or commonly owned corporations controlled at the end of its fiscal year or at the effective date of the change of ownership or termination of its last HCS contract.

(C) Aggregation Request. To exercise the aggregation option, the entity or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, that single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(D) Frequency of Aggregation Requests. The entity or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(E) Ownership Changes and Contract Terminations. HCS contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per paragraph (4) of this subsection, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §355.725, §355.791

The Texas Health and Human Services Commission (HHSC) proposes new §355.725, Reimbursement Methodology for Professional Services and Requisition Fees for Home and Commu-

nity-based Services (HCS) and amendments to §355.791, Reporting Costs and Reimbursement Methodology for the Texas Home Living (TxHmL) Program, under Title 1, Part 15, Chapter 355, Subchapter F.

Background and Justification

New §355.725 establishes the reimbursement methodology for professional services and requisition fees for the Home and Community-based Services (HCS) program.

The definitions for professional services (nursing, physical, occupational and speech therapy, behavioral supports, dietary services and audiology) in the various Department of Aging and Disability Services (DADS) §1915(c) waiver programs including Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), HCS, TxHmL, Medically Dependent Children Program (MDCP), and Deaf-Blind Multiple Disabilities (DBMD) are identical but the rates vary with CBA, CLASS, MDCP and DBMD using one set of rates and with HCS and TxHmL using different rates.

New §355.725 will give HHSC the authority to combine allowable costs per unit of service for HCS professional services with allowable costs per unit of service for identical professional services from other DADS §1915(c) waiver programs into a single database for use in determining reimbursement rates for these services in accordance with proposed new §355.502, Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers. Proposed amendments to §355.791 will give HHSC similar authority for the TxHmL waiver program.

The current difference in nursing rates between HCS and TxHmL and the remaining DADS §1915(c) waiver programs was justified in the past due to different DADS billing guidelines for CBA, CLASS, MDCP and DBMD than those for HCS and TxHmL. DADS is revising the HCS and TxHmL nursing billing guidelines to match the CBA, CLASS, MDCP and DBMD guidelines effective September 1, 2009. The change in HCS and TxHmL nursing billing guidelines will enable providers in these programs to bill for significantly more units of service than allowed under the current guidelines. Because of this change in billing guidelines that allows for more units of service to be billed, the nursing rates for these programs will be adjusted effective September 1, 2009 to reflect the new billing guidelines that will go into effect on September 1, 2009. Proposed new §355.725 and proposed amendments to §355.791 will allow for these needed adjustments to take place. Because HCS and TxHmL providers will be able to bill more nursing units of service without changing the actual amount of nursing services provided, the nursing rates in these two programs must be adjusted in order for this change in billing guidelines to be fiscally neutral. Data on nursing costs associated with the new billing guidelines for HCS and TxHmL will not be available until the 2012-13 biennium; in the interim, new §355.725 and amendments to §355.791 will allow HHSC to use the nursing rates currently in place for CBA, CLASS, MDCP and DBMD for HCS and TxHmL. When data becomes available for HCS and TxHmL under the new billing guidelines, nursing rates will be calculated using data from all §1915(c) waiver program cost reports.

The difference in rates for other (non-nursing) professional services is due to the lack of robust cost data on these services in CBA, CLASS, DBMD and MDCP. The vast majority of units of service for these services are provided in HCS and TxHmL. New §355.725 and amendments to §355.791 will allow HHSC to combine data on other professional services costs from HCS and TxHmL with data from the other DADS §1915(c) waivers to develop uniform rates for these services.

New §355.725 will provide a reimbursement methodology for payment rates for requisition fees in HCS to provide payments for the cost of acquiring adaptive aids and minor home modifications for consumers. Requisition fees are currently not reimbursed in the HCS program but are currently reimbursed in other §1915(c) waiver programs.

These proposals will move HHSC closer to achieving its goal of standardizing professional service rates in community based programs.

HHSC, under its authority and responsibility to administer and implement rates, is also proposing changes to §355.791 that outline how the TxHmL rates will be determined effective September 1, 2009 and thereafter. The proposed amendment will adjust payment rates for TxHmL to comply with the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009) which appropriated general revenue funds for provider rate increases for this program to set TxHmL rates equal to HCS rates for similar services.

Finally, HHSC is proposing to revise §355.791 to replace outdated references to the legacy Department of Mental Health and Mental Retardation (MHMR) with references to DADS and to indicate that failure to maintain accurate records will result in HHSC notifying DADS to place the TxHmL program provider on vendor hold. The current rule language requires both the TxHmL program provider and all waiver contracts to be placed on vendor hold.

Section-by-Section Summary

HHSC proposes new §355.725 as follows:

Add new subsection (a) to state that, effective September 1, 2009 and thereafter, the payment rates for professional services, including physical therapy, occupational therapy, speech/hearing/language, nursing services provided by an registered nurse (RN), nursing services provided by an licensed vocational nurse (LVN), auditory services, dietary services, and behavioral support services will be equal to the rates for these services as determined in accordance with §355.502, Reimbursement Methodology for Professional Services in Home and Community-based Services Waivers.

Add new subsection (b) to state that, effective September 1, 2009 and thereafter, the payment rates for requisition fees for acquiring adaptive aids and minor home modifications will vary based on the actual cost of the adaptive aide and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

HHSC proposes to amend §355.791 as follows:

Modify subsection (c) to replace an outdated reference to the legacy MHMR with a reference to DADS and to indicate that failure to maintain accurate records will result in HHSC notifying DADS to place the TxHmL program provider on vendor hold.

Modify paragraph (l)(3) to replace an outdated reference to the legacy MHMR with a reference to DADS.

Add a new subsection (s) to state that, effective September 1, 2009 and thereafter, the payment rate for day habilitation services will be equal to the HCS approved rate for day habilitation services for Level of Need 5; the payment rate for community supports will be equal to the HCS approved rate for supported home living, the payment rate for respite will be equal to the HCS approved rate for respite; and the payment rates for supported employment and employment assistance will be equal to the HCS approved rate for supported employment.

Add a new subsection (t) to state that, effective September 1, 2009 and thereafter, the payment rates for professional services, including physical therapy, occupational therapy, speech/hearing/language, nursing services provided by an RN, nursing services provided by an LVN, auditory services, dietary services, and behavioral support services and payment rates for requisition fees will be equal to the HCS approved rates for these services as determined in accordance with new §355.725, Reimbursement Methodology for Professional Services and Requisition Fees for Home and Community-based Services.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be a fiscal impact to state government as result of increasing TxHmL rates to match HCS rates for similar services of $1,657,985 for state fiscal year (FY) 2010, $1,674,544 for FY 2011, $1,662,437 for SFY 2012, $1,662,437 for FY 2013, and $1,662,437 for FY 2014. There will be no fiscal impact from adjusting HCS nursing rates because any decrease in the unit rate will be offset by an increase in the number of units billed. It is anticipated that there will be no fiscal impact from adjusting HCS and TxHmL other professional services rates since the combined database contemplated in the amendments will be dominated by HCS and TxHmL units of service. The fiscal impact to state government of codifying a reimbursement methodology for payment rates for requisition fees in HCS will be $71,951 for state fiscal year (FY) 2010, $84,192 for FY 2011, $84,151 for SFY 2012, $84,151 for FY 2013, and $84,151 for FY 2014. There will be no fiscal impact from codifying a reimbursement methodology for payment rates for requisition fees in TxHmL since requisition fees are already paid in that program. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is that the same rates will be paid for similar professional services across §1915(c) waiver programs and that requisition fees will be made available in the HCS program. The rule amendment will also specify how TxHmL rates will be equal to similar rates in the HCS program beginning September 1, 2009 and will correctly describe vendor hold requirements for noncompliance with record keeping requirements.

Public Hearing

HHSC will hold a public hearing on July 7, 2009, at 9:30 a.m. (Central Time) to receive public comment on the proposal. The hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Meisha Scott by calling (512) 491-1453, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment and new rule are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment and new rule affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.725. Reimbursement Methodology for Professional Services and Requisition Fees for Home and Community-based Services (HCS).

(a) For professional services, including physical therapy, occupational therapy, speech/hearing/language, nursing services

provided by a registered nurse, nursing services provided by an licensed vocational nurse, auditory services, dietary services, and behavioral support services, an allowable cost per unit of service is calculated for each contracted provider in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS)). This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Professional Services in Home and Community-Based Services Waivers).

(b) Requisition fees. Requisition fees are reimbursements paid to the HCS contracted providers for their efforts in acquiring adaptive aids and minor home modifications for HCS participants. Requisition fee reimbursement for adaptive aids and minor home modifications will vary based on the actual cost of the adaptive aid and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

§355.791. Reporting Costs and Reimbursement Methodology for the Texas Home Living (TxHmL) Program.

(a) Submission of cost reports. On an annual basis, Texas Home Living (TxHmL) Program providers must submit cost reports as directed by the Health and Human Services Commission (HHSC) or its designee in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(1) "Direct service costs" are defined in §355.102(f)(3) of this title (relating to General Principles of Allowable and Unallowable Costs). For purposes of this section, direct service costs include:

(A) costs associated with personnel who provide direct hands-on support for consumers and include personnel such as:

(i) direct care workers;

(ii) first-level supervisors of direct care workers;

(iii) registered nurses;

(iv) licensed vocational nurses; and

(v) other personnel who provide activities of daily living training and clinical program services; and

(B) costs related to:

(i) wage rates;

(ii) benefits;

(iii) payroll taxes;

(iv) contracts for direct services; and

(v) direct service supervision information; and

(C) leave (sick or vacation) in accordance with §355.103(b)(1)(A)(iii)(III)(-c-) of this title (relating to Specifications for Allowable and Unallowable Costs) including accrued leave if the TxHmL Program provider has implemented a written policy that entitles an employee to the cash value of accrued leave upon termination.

(2) For staff whose duties include work other than the provision of direct services, the proportion of work that is spent on direct services may be included in the direct service costs.

(A) The proportion of their salary and benefits that is compensation for direct services work can be included in the direct service cost report only to the extent that the salary and benefits for this direct service work must be the lesser of the actual wages and benefits or the wages and benefits for a comparable direct care worker assumed in the model.

(B) The TxHmL Program provider must have a procedure in place that specifies how direct service work time is allocated.

(3) TxHmL Program providers must report the following information in the Full Cost Report:

(A) direct service costs related to the delivery of direct services including, but not limited to community support services, supported employment, and the direct supervision of the delivery of these services; and

(B) indirect costs including but not limited to facility operating and administrative costs.

(4) These direct service costs and indirect costs may be either the TxHmL Program provider's actual expense or contracted expenditures.

(b) Record keeping requirements.

(1) A TxHmL Program provider must:

(A) retain records according to HHSC's requirements;

(B) ensure that records are accurate and sufficiently detailed to provide the legal, financial, and statistical information requested by HHSC; and

(C) maintain all work papers and any other records that support the information submitted on the Full Cost Reports relating to all allocations, cost centers, cost or statistical line items, surveys, and schedules.

(2) HHSC may require supporting documentation other than that contained in the cost report to substantiate reported information.

(3) A TxHmL Program provider must maintain documentation relating to compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~].

(4) A TxHmL Program provider must maintain clearly defined bonus policies in its written agreements with employees or in its overall employment policy in accordance with §355.103(b)(1)(A)(i) of this title [~~(relating to Specifications for Allowable and Unallowable Costs)~~] and for owners and related parties §355.105(b)(2)(B)(xi)(I) of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~].

(5) A TxHmL Program provider must maintain clearly defined benefit policies in its written agreements with employees or in its overall employment policy in accordance with §355.103(b)(1)(A)(iii) of this title [~~(relating to Specifications for Allowable and Unallowable Costs)~~] and for owners and related parties §355.105(b)(2)(B)(xi)(II) of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~].

(6) A TxHmL Program provider must maintain documentation for each employee that clearly identifies each compensation component, including regular pay, overtime pay, incentive pay, mileage reimbursements, bonuses, sick leave, vacation, other paid leave, deferred compensation, retirement contributions, TxHmL Pro-

gram provider-paid instructional courses, health insurance, disability insurance, life insurance, and any other form of compensation.

(A) Types of documentation would include insurance policies, TxHmL Program provider benefit policies, records showing paid leave accrued and taken, documentation to support hours (regular and overtime) worked and wages paid, and mileage logs or other documentation to support mileage reimbursements and travel allowances.

(B) For accrued benefits, the documentation must clearly identify the period of the accrual. For example, if an employee accrues two weeks of vacation during 20X1 and receives the corresponding vacation pay during 20X3, that employee's compensation documentation for 20X3 should clearly indicate that the vacation pay received had been accrued during 20X1.

(c) Noncompliance with record keeping requirements. Failure to maintain accurate records is a violation of the TxHmL Program provider contract, and will result in HHSC notifying DADS [~~TDMHMR~~] to place the TxHmL Program provider [~~and all waiver contracts~~] on vendor hold.

(d) Cost reporting. A TxHmL Program provider must complete Full Cost Reports in accordance with HHSC's rules, regulations, and instructions.

(1) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~].

(2) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(3) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(4) Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title [~~(relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs)~~]. Owner and related party employees who provide both direct care and indirect services must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~]. The maximum hours per fiscal year that an owner and related party employee may report on the cost report is 2080 hours per fiscal year.

(e) Cost certification. A TxHmL Program provider must certify the accuracy of cost reports submitted to HHSC. A TxHmL Program provider may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC requirements.

(f) Due date. A TxHmL Program provider must submit Full Cost Reports in accordance with §355.105(c) of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~].

(g) Extension of due date. HHSC may grant extensions of due dates for good cause in accordance with §355.105(c)(2) of this title.

(h) Cost data. HHSC may at times require additional financial and statistical information to assess the fiscal integrity of the TxHmL Program in accordance with §355.105(c)(3) of this title.

(i) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes a violation of the TxHmL Program provider contract and may result in vendor hold.

(j) Review of cost data. HHSC reviews each TxHmL Program provider's cost data to determine whether the financial and statistical information submitted conforms to all applicable rules and instructions. Forms that are not completed according to HHSC's instructions or rules may be returned to the TxHmL Program provider for proper completion.

(k) Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(l) Access to records. Each TxHmL Program provider must allow access by HHSC or its authorized representatives to any and all records necessary to verify cost data submitted to HHSC.

(1) This requirement includes records pertaining to related-party transactions and other business activities engaged in by the TxHmL Program provider that are directly or indirectly related to the provision of contracted services.

(2) Failure to allow inspection of pertinent records within 10 working days following written notice from HHSC constitutes a violation of the TxHmL Program provider contract.

(3) If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the TxHmL Program provider's entities having Medicaid contracts with DADS [~~TDMHMR~~].

(4) Additional rules regarding access to records that are out-of-state may be found in §355.105 of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~].

(m) Reviews of exclusions or adjustments. An TxHmL Program provider who disagrees with HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(n) Notification of exclusions and adjustments. HHSC will notify a TxHmL Program provider of exclusions and any adjustments, including caps applied, to reported costs in accordance with §355.107 of this title [~~(relating to Notification of Exclusions and Adjustments)~~].

(o) General requirements. HHSC determines reimbursement rates according to §355.101 of this title (relating to Introduction).

(p) Payment rate determination. For the initial reimbursement period, beginning the effective date of the Center for Medicare and Medicaid Services (CMS) approval of the waiver, payment rates are those rates determined for other Medicaid programs with similar services. When payment rates are not available from other Medicaid programs with similar services, payment rates are determined on a pro forma approach in accordance with §355.101(c)(2)(B) and §355.105(h) of this title [~~(relating to General Reporting and Documentation Requirements, Methods, and Procedures)~~].

(q) Payment rates for TxHmL services in effect for the initial reimbursement period will remain in effect until HHSC obtains sufficient reliable cost data to determine new payment rates.

(r) Each TxHmL Program provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(s) Effective September 1, 2009 and thereafter, the payment rate for day habilitation services will be equal to the Home and Community-based Services (HCS) waiver program approved rate for day habilitation services for Level of Need 5; the payment rate for community supports will be equal to the HCS waiver program approved rate for supported home living; the payment rate for respite will be equal to the HCS waiver program approved rate for respite; and the payment rates for supported employment and employment assistance will be equal to the HCS waiver program approved rate for supported employment. The referenced HCS waiver program approved rates are calculated in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS)).

(t) Effective September 1, 2009 and thereafter, the payment rates for professional services, including physical therapy, occupational therapy, speech/hearing/language, nursing services provided by an RN, nursing services provided by an LVN, auditory services, dietary services, behavioral support services, and requisition fees will be equal to the HCS waiver program approved rates for these services as calculated in accordance with §355.725 of this title (relating to Reimbursement Methodology for Professional Services and Requisition Fees for Home and Community-based Services (HCS)).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902560
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

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SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.7103, Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements, under Title 1, Part 15, Chapter 355, Subchapter H.

Background and Justification

This rule establishes the reimbursement methodology for 24-Hour Residential Child-Care Reimbursements. HHSC, under its authority and responsibility to administer and implement rates, is proposing changes to this rule to outline how the 24-Hour Residential Child-Care rates effective September 1, 2009, through August 31, 2011, will be determined. The proposed amendment will adjust payment rates for the 24-Hour Residential Child-Care program to comply with the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009), which appropriated general revenue funds for provider rate increases for this program.

Section-by-Section Summary

The proposed amendments to §355.7103 are as follows:

Add a new subsection (q) to state that for the state fiscal year 2010 through 2011 biennium:

For foster families, the payments effective September 1, 2009, through August 31, 2011 for each level of service will be equal to the minimum rate paid to foster families for that level of service in effect August 31, 2009, plus 3.33 percent.

For child placing agencies (CPAs), the rates effective September 1, 2009, through August 31, 2011, for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2009, plus 2.41 percent, which is equivalent to a 1.33 percent increase for CPA retainage and a 3.33 percent increase in pass-through funds for foster families. The following facility types are included as CPAs: independent foster family/group homes; independent therapeutic foster family/group homes; independent habilitative foster family/group homes; and independent primary medical needs foster family/group homes.

For residential care facilities (RCFs), the rates effective September 1, 2009, through August 31, 2011, for each level of service will be equal to the rate paid to RCFs for that level of service in effect August 31, 2009, plus 9.30 percent.

For emergency shelters, the rate effective September 1, 2009, through August 31, 2011, will be equal to the rate in effect August 31, 2009, plus 8.68 percent.

For psychiatric step-down services, the rate effective September 1, 2009, through August 31, 2011, will be equal to the rate in effect on August 31, 2009.

Fiscal Note

Cindy Brown, Chief Financial Officer for the Department of Family and Protective Services (DFPS), has determined that during the first five-year period the amended rule is in effect there will be a fiscal impact to state government of $6,250,289 for state fiscal year (FY) 2010, $6,725,087 for FY 2011, $7,304,545 for FY 2012, $7,661,159 for FY 2013, and $7,974,747 for FY 2014. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years the amendment is in effect, the expected public benefit is that foster families, CPAs, RTCs, emergency shelters and providers of psychiatric step-down services will be paid the proper reimbursement rates in compliance with legislative appropriations.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by facsimile at (512) 491-1998, by e-mail to pam.mcdonald@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Government Code §531.055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; and Human Resources Code §40.4004(c) and (d), which authorize the Executive Commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule.

The amendment implements Government Code, §531.033 and §531.055.

§355.7103. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) - (p) (No change.)

(q) For the state fiscal year 2010 through 2011 biennium, for foster families, the payments effective September 1, 2009, through August 31, 2011, for each level of service will be equal to the minimum rate paid to foster families for that level of service in effect August 31, 2009, plus 3.33 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2009, through August 31, 2011, for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2009, plus 2.41 percent, which is equivalent to a 1.33 percent increase for CPA retainage and a 3.33 percent increase in pass-through funds for foster families. For Residential Care Facilities (RCFs), the rates effective September 1, 2009, through August 31, 2011, for each level of service will be equal to the rate paid to RCFs for that level of service in effect August 31, 2009, plus 9.30 percent. For Emergency Shelters, the rate effective September 1, 2009, through August 31, 2011, will be equal to the rate in effect August 31, 2009, plus 8.68 percent. For psychiatric step-down services, the rate effective September 1, 2009, through August 31, 2011, will be equal to the rate in effect on August 31, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902482
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 1, Part 15, Subchapter J, §355.8052, concerning Inpatient Hospital Reimbursement. The amendments update the Medicaid inpatient hospital reimbursement methodology for fiscal year 2010 and to remove references to fiscal year 2009 rebasing.

Background and Justification

This proposed amendment will change the Medicaid inpatient hospital reimbursement methodology within §355.8052 to remove references to fiscal year 2009 rebasing, and to give HHSC the authority to rebase and proportionately adjust inpatient hospital payment division standard dollar amounts within current appropriations for payments during fiscal year 2010 in accordance with the 2010-11 General Appropriations Act (Article II, Health and Human Services Commission, Rider 68, S.B. 1, 81st Legislature, Regular Session, 2009).

Rebasing inpatient hospital rates for fiscal year 2009, provided for in the current version of §355.8052, was contingent on the federal Centers for Medicare and Medicaid Services (CMS) approving and HHSC implementing the Medicaid reform waiver. Because CMS has not approved HHSC's pending Medicaid reform waiver, HHSC will not rebase Medicaid inpatient hospital rates for fiscal year 2009.

The payment division standard dollar amount (PDSDA) is a component of the Medicaid inpatient reimbursement formula for hospitals. The PDSDA is the weighted average dollar amount per claim calculated for all hospitals in a payment division, which is a grouping of hospital-specific standard dollar amounts (HSDA). The HSDA is based on each hospital's average cost per claim for a designated base year, adjusted by the case mix index and cost-of-living index.

HHSC proposes to amend §355.8052 to rebase and adjust PDSDAs during fiscal year 2010 to be applied prospectively. For fiscal year 2010, HHSC will rebase the PDSDAs for inpatient hospitals using a base year of federal fiscal year 2008. The federal fiscal year 2008 base year will include the 6-month grace period through March 31, 2009. HHSC has elected to use the 12-month period of federal fiscal year 2008 to reflect the change to Medicare Severity Diagnosis Related Groups (DRG) that occurred in October 2007. HHSC will adjust PDSDAs proportionately for each hospital so that the resulting expenditures incurred using the recomputed PDSDAs are not higher than the funds appropriated to HHSC for this purpose. In addition, a few identified hospitals' current PDSDAs will be adjusted to correspond to current payment divisions, and these adjusted PDSDAs will be used in the proportional rebasing. This adjustment is intended to ensure that all hospitals are consistently reimbursed based on legislative guidance and HHSC policy and regulation.

Diagnosis Related Group (DRG) statistics (relative weight, mean length of stay, and day outlier threshold) are another component of the Medicaid inpatient hospital reimbursement formula. The proposed amendment gives HHSC the authority to update all DRG statistics for fiscal year 2010 based on federal fiscal year 2008 base-year claims information. HHSC will implement the DRG update prospectively when it implements the rebased PDADAs. HHSC is updating DRG statistics as part of the rebasing and to better reflect differences in the complexity of care.

The rebasing of the PDSDAs and the DRG changes described above will not result in any fiscal impact to the state.

The proposed amendment also clarifies the sections of the rule related to the rates for new hospitals and hospital mergers. The amendment defines the duration of the new-hospital PDSDA as five years from the effective date of the new hospital PDSDA rate. The proposed amendment clarifies that for merged hospitals, the combined PDSDA, which results in one reimbursement rate for the merged hospitals, applies as of the date the Medicare program recognizes the merger. The amendment proposes additional methodologies for calculating merged hospital PDSDAs.

Section-by-Section Summary

Proposed §355.8052(a) updates paragraph (1) to remove references to fiscal year 2009. Paragraph (3) provides that HHSC will send each hospital a final notification letter reporting the hospital's PDSDA for each fiscal year or any portion thereof designated by HHSC, including any adjustment of its PDSDA. Subsection (a)(4) is updated to allow HHSC to rebase at its discretion during the state fiscal year that is three years after the last rebasing if funds have not been appropriated for that purpose.

Proposed §355.8052(c)(28) adds a definition of "payment division index (PDI)" as a list of all payment divisions and their corresponding valid PDSDAs. Paragraphs following the new definition are renumbered.

Proposed §355.8052(c)(29) adds to the definition of PDSDA that a PDSDA may be adjusted pursuant to §355.201 of this title, if necessary.

Proposed §355.8052(c)(30) adds a definition of "rebasing" as the process for calculating DRG statistics and each hospital's PDSDA.

Proposed §355.8052(d) updates the subsection heading to include "Calculations" to indicate this subsection is for the purpose of calculating the hospitals' PDSDAs. Paragraph (1) removes the rule language specific to recalculation of PDSDAs in fiscal year 2009.

Proposed §355.8052(d)(2) states that HHSC may adjust a hospital's PDSDA in accordance with §355.201 of this title and removes the rule language specific to adjustment of PDSDAs in fiscal year 2009. The proposed amendment adds language regarding adjusting the PDSDA of any hospital that was not active for reimbursement purposes during any period in which HHSC adjusted rates and whose PDSDA is not reflected in the PDI.

Proposed §355.8052(d)(5) explains that each payment division is assigned a number in the payment division index (PDI) and provides an example of how hospitals are grouped within a payment division.

Proposed §355.8052(d)(6)(D) contains the "Minimum PDSDA" language that previously was in paragraph (7).

Proposed §355.8052(d)(7) adds a new paragraph, "Payment Division Index (PDI)." Subparagraph (A) explains that after a hospital has been assigned a payment division number, the corresponding PDSDA will be subject to adjustment in accordance with subsection (d)(2). Subparagraph (B) describes the application of the minimum PDSDA for adjusted PDSDAs below this floor. Subparagraph (C) describes the universal mean PDSDA calculation to include the applicable adjustment and the payment division designation. Subparagraph (D) applies any adjustment in accordance with subparagraph (A) of this paragraph to the "new hospital rate."

Proposed §355.8052(d)(8) removes the description of the calculation of the PDSDA for specific types of hospitals receiving the universal mean PDSDA, which was moved to subsection (d)(7)(C).

Proposed §355.8052(d)(8)(B) describes the rate determination process for new hospitals and identifies the time period during which the rate will be in effect. The amendment changes the duration period of the rate for new hospitals from five years from enrollment to five years from the effective date of the rate. Clause (iv) provides that the calculation of the PDSDA for new hospitals is subject to the adjustments described in paragraph (7).

Proposed §355.8052(d)(9)(A) clarifies that hospitals seeking to merge must provide notice to HHSC.

Proposed §355.8052(d)(9)(B) describes different methodologies for calculating the PDSDA for merging hospitals depending on the merging hospitals' current PDSDAs and any adjustments or realignments of the PDSDAs. Clauses (i) and (iii) set out procedures for merging hospitals after rebasing has been completed. The procedure in clause (i) applies when none of the merging hospitals received an adjusted or realigned PDSDA. The procedure in clause (iii) applies when the merger involves at least one hospital having a PDSDA that is not based on the average base-year cost per claim for that hospital. The procedure in clause (iv) is used when a merger is recognized during the rebasing of hospital PDSDAs. Clauses (i), (iii), and (iv) clarify the effective date for the merged hospital's PDSDA.

Proposed §355.8052(d)(9)(C) clarifies that HHSC will not recalculate the PDSDA for a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse based on the acquired hospital's PDSDA.

Proposed §355.8052(f)(2) clarifies that a hospital may not request a review regarding the elements of the prospective payment methodology used by HHSC.

Proposed §355.8052(h)(3) clarifies that HHSC may require a hospital to provide additional data with its hospital cost report in the specified format and timeframe prescribed by HHSC.

Other changes are made throughout the rule to update references and for consistency with common usage.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be no fiscal impact to state government as a result of rebasing and proportionately adjusting inpatient hospital payment division standard dollar amounts within current appropriations.

HHSC anticipates that the net fiscal impact of the amendment to all Medicaid hospitals will be zero. While the changes to the inpatient reimbursement methodology may increase or decrease Medicaid revenue to individual hospitals, including hospital districts, local governments will not incur additional costs as a result of the amendment. The proposed rule will not result in any fiscal implications for local health and human services agencies.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule.

HHSC is unable to determine the fiscal impact on acute care hospitals that meet the state criteria for qualifying as a small business, either positively or adversely. The information and data required to complete the analysis for each hospital will not be available for at least six months.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of enforcing the amendment, will be to clarify that rebasing will not occur in fiscal year 2009 and that HHSC will update the Medicaid inpatient hospital reimbursement methodology during fiscal year 2010 within current appropriations in order to pay inpatient reimbursement rates that more closely approximate all hospitals' costs. Also, the rule clarifies how new hospital and merged hospital payments are determined.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983; or by e-mail at chris.dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8052. Inpatient Hospital Reimbursement.

(a) Application and general reimbursement method.

(1) The prospective payment system described in this section applies to inpatient hospital payments [~~for admissions beginning in Fiscal Year (FY) 2009~~].

(2) HHSC calculates reimbursement for a covered inpatient hospital service, determined in subsection (g) of this section, by multiplying the hospital's payment division standard dollar amount, determined in subsection (d) of this section, by the relative weight for the appropriate diagnosis-related group, determined in subsection (e) of this section.

(3) HHSC will send a hospital an initial notification letter describing the hospital-specific and payment division standard dollar amounts resulting from the rebasing process referenced [~~, determined~~] in subsection (d)(1) of this section. HHSC will send a hospital a final notification letter reporting the hospital's PDSDA for a given fiscal year or any portion thereof designated by HHSC, which may include any adjustment described in subsection (d) of this section [~~payment division standard dollar amount, adjusted as described in subsection (d)(2) of this section, to be used in calculating the hospital's reimbursements~~].

(4) HHSC will rebase hospital-specific and payment division standard dollar amounts [~~in subsequent years~~] when funds are appropriated for that purpose or, at its discretion, during the state fiscal year that is three years after the last rebasing year.

(b) Exceptions. The prospective payment system described in this section does not apply to the following types of hospitals for covered inpatient hospital services:

(1) In-state and out-of-state children's hospitals. In-state and out-of-state children's hospitals are reimbursed using the methodology described in §355.8054 of this chapter (relating to Children's Hospital Reimbursement Methodology).

(2) State-owned teaching hospitals. A state-owned teaching hospital is reimbursed in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) principles using the methodology described in §355.8056 of this chapter (relating to State-Owned Teaching Hospital Reimbursement Methodology).

(3) Freestanding psychiatric hospitals. A freestanding psychiatric hospital is reimbursed under the methodology described in §355.8063 of this chapter (relating to Reimbursement Methodology for Inpatient Hospital Services).

(c) Definitions. When used in this section, and §355.8054 and §355.8056 of this chapter, the following words and terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(2) Average base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the arithmetic mean of base year costs per claim for a hospital, obtained by dividing the sum of all base year costs per claim for that hospital by the number of base year claims in the set.

(3) Base year--A period of 12 consecutive months selected by HHSC.

(4) Base year claims--All Medicaid inpatient hospital claims for reimbursement filed by a hospital that:

(A) Have a date of admission occurring within the base year;

(B) Are adjudicated and approved for payment during the base year and the six-month grace period that immediately follows the base year or another grace period designated by HHSC and communicated in writing to all hospitals;

(C) Are not claims for patients who are covered by Medicare; and

(D) Are not Medicaid spend-down claims.

(5) Base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the cost for a claim that would have been made to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), described in subsection (d)(3)(A) of this section.

(6) Case mix index--The average relative weight of a hospital's base year claims, obtained by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims.

(7) Cost-of-Living Index--An adjustment applied to hospital-specific standard dollar amounts based on the Market Basket Index to account for changes in cost of living.

(8) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(9) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(10) Data entry error--An error resulting from mis-keyed or mistyped data that is different from the intended entry. This type of error does not include the omission of claims approved for payment after the base year and grace period.

(11) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(12) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(13) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the Medicare DRG system or as otherwise specified by HHSC.

(14) Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary, or in the case of children's hospitals, audited by HHSC.

(15) HHSC--The Texas Health and Human Services Commission or its designee.

(16) Hospital-specific [~~Hospital--specific~~] standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount (PDSDA); the average base year cost per claim for a hospital, adjusted by the case mix index and cost-of-living index.

(17) In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(18) Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(19) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, or inpatient cost-to-charge ratio, expressed as a percentage. The interim rate established at tentative settlement includes incentive and penalty payments associated with TEFRA target caps to the extent that they continue to be permitted by federal law and regulation.

(20) Market Basket Index--The Centers for Medicare and Medicaid Services (CMS) projection of the annual percentage increase in hospital inpatient operating costs, as defined in 42 C.F.R. §413.40.

(21) Mathematical error--An error that results from the erroneous application of variables, quotients, or functions within a methodology formula resulting in a different result than intended methodology results. This type of error does not include the omission of claims approved for payment after the base year and grace period.

(22) Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each diagnosis related group; for each diagnosis related group, the average number of days that a patient stays in the hospital.

(23) Military hospital--A hospital operated by the armed forces of the United States.

(24) New hospital--A hospital that was newly constructed and enrolled as a Medicaid provider after the end of the base year.

(25) Newly enrolled hospital--A hospital that was assigned a new Texas Provider Identification number (TPI) and was enrolled as a Medicaid provider after the end of the base year.

(26) Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(27) Payment division--A group of hospitals whose calculated hospital-specific standard dollar amounts fall within a $100 range, where the $100 increments begin at zero.

(28) Payment division index (PDI)--A list of all payment divisions and their corresponding valid payment division standard dollar amounts.

(29) [~~(28)~~] Payment division standard dollar amount (PDSDA)--The weighted average dollar amount per claim calculated for all hospitals in a payment division, adjusted pursuant to §355.201 of

this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission), if necessary.

(30) Rebasing--Calculation of the TEFRA cost for base year claims for each Medicaid inpatient hospital. The TEFRA costs for base year claims will be used to recalculate HSDAs, PDSDAs, and DRG statistics (relative weight, mean length of stay, and day outlier threshold) using the methods described in this section.

(31) [~~(29)~~] Relative weight--The weighting factor HHSC assigns to a diagnosis related group representing the time and resources associated with providing services for that diagnosis related group.

(32) [~~(30)~~] State-owned teaching hospital--The following hospitals: University of Texas Medical Branch (UTMB); University of Texas Health Center Tyler; and M.D. Anderson Hospital.

(33) [~~(31)~~] TEFRA cost for rebasing--One factor used in arriving at the hospital-specific standard dollar amount; Medicaid allowable charges for base year claims adjusted to cost by the interim rate derived from tentative or final settlement of cost reports that cover time periods in the base year.

(34) [~~(32)~~] TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to the cost settlement for a hospital reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to patients under age 21.

(35) [~~(33)~~] Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(36) [~~(34)~~] Universal mean [~~Mean~~]--Average base year cost per claim for all hospitals.

(37) [~~(35)~~] Weighted hospital-specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount; the product obtained by multiplying a hospital's hospital-specific standard dollar amount by the number of its base year claims.

(d) Payment Division Standard Dollar Amount (PDSDA) Calculations. HHSC will use the methodologies described in this subsection to determine the PDSDA for a hospital.

(1) Rebasing [~~Recalculation of~~] PDSDAs.

[~~(A)~~] HHSC may [~~will~~] recalculate a hospital's PDSDA using [~~PDSDAs for payments in FY 2009 unless:~~]

~~*[(i)* HHSC's application for the Medicaid reform waiver authorized under Senate Bill 10 (80th Legislature, Regular Session, Chapter 268, §7 (2007) does not receive federal approval;]~~

~~*[(ii)* HHSC does not implement the Medicaid reform waiver authorized under Senate Bill 10 (80th Legislature, Regular Session, Chapter 268, §7 (2007); or]~~

~~*[(iii)* Funds are not available for the purpose of recalculating PDSDAs.]~~

~~[(B) In the event HHSC does not recalculate PDSDAs for payments in FY 2009, payments will be based on the rates in effect on August 31, 2008.]~~

[~~(C)~~] [~~HHSC recalculates PDSDAs for payments in FY 2009 using FY 2006~~] base year claims. HHSC will not include claims that are adjudicated and approved for payment after the base year and subsequent six-month grace period. The six-month grace period is intended to allow HHSC to include [~~inclusion of~~] as many base year claims as possible, given practical time constraints.

(2) Adjustment of PDSDAs.

(A) HHSC may adjust a hospital's PDSDA [~~PDSDAs~~] in accordance with §355.201 of this title [~~if HHSC determines that a recalculated PDSDA may have a significant and measurable effect on provider participation or have a significant and measurable effect on a provider's ability to deliver services~~].

(B) For a hospital that was inactive for reimbursement purposes during any period in which HHSC made an adjustment:

(i) HHSC will adjust the hospital's PDSDA accordingly; and

(ii) HHSC will assign the hospital to a payment division within the PDI that corresponds to the PDSDA as determined in clause (i) of this subparagraph.

~~[(B) If HHSC recalculates PDSDAs for payments in FY 2009, HHSC will:]~~

~~*[(i)* Adjust PDSDAs pro rata among hospitals to available funds;]~~

~~*[(ii)* Exempt a hospital from the adjustment in clause (i) of this subparagraph if such adjustment would result in a lower rate than the hospital received as of August 31, 2008, in order to preserve the Medicaid provider base, ensure access to Medicaid hospital services, and minimize the effects of PDSDA decreases;]~~

~~*[(iii)* Apply a rate in place of the PDSDA, for a hospital that is exempted under clause (ii) of this subparagraph, that is the lesser of:]~~

~~*[(I)* the rate the hospital received as of August 31, 2008; or]~~

~~*[(II)* the fully rebased PDSDA before applying the adjustment described in clause (i) of this subparagraph;]~~

~~*[(iv)* Apply the PDSDA described in clause (i) of this subparagraph for all hospitals that are not exempted under clause (ii) of this subparagraph, without any recalculation within the payment divisions; and]~~

~~*[(v)* Not apply to any hospital a rate lower than the minimum PDSDA described in paragraph (7) of this subsection.]~~

(3) Hospital-specific standard dollar amount (HSDA). Using base year claims, HHSC calculates an HSDA for each hospital as follows:

(A) Determines for each claim, the base year cost per claim, which is the greater of:

(i) the amount of TEFRA cost for rebasing, which is calculated under paragraph (10) of this subsection; or

(ii) payments from other insurance;

(B) Sums the dollar amount for each hospital's base year costs per claim determined in subparagraph (A) of this paragraph;

(C) Calculates the average base year cost per claim by dividing the result in subparagraph (B) of this paragraph by the total number of base year claims for the hospital;

(D) Calculates the case mix index by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims;

(E) Divides the average base year cost per claim determined in subparagraph (C) of this paragraph by the hospital's case mix index determined in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by the cost-of-living index described in paragraph (4) of this subsection to adjust costs from the base year to the rebased-rate year, which results in the HSDA.

(4) Cost-of-Living Index. HHSC updates HSDAs by applying a cost-of-living index to the HSDA established for the base year. HHSC uses the CMS Prospective Payment System Hospital Market Basket Index based on a federal fiscal year adjusted to a state fiscal year.

(5) Payment Divisions. HHSC groups hospital HSDAs into payment divisions by one-hundred-dollar ($100) increments beginning at zero. Each payment division is assigned a number in the PDI. For example, all hospitals with HSDAs between $1,700.00 and $1,799.99 [~~$1,600.00 and~~ $1,699.99] are grouped together in payment division number 18 within the PDI.

(6) Payment Division Standard Dollar Amount (PDSDA).

(A) HHSC computes a PDSDA for all hospitals within a payment division as follows:

(i) multiplies each hospital's HSDA by the hospital's total number of base year claims, resulting in a weighted HSDA;

(ii) sums the weighted HSDAs determined in clause (i) of this subparagraph for all hospitals within a payment division; and

(iii) divides the result in clause (ii) of this subparagraph by the total number of base year claims for all hospitals within a payment division, which results in the PDSDA.

(B) The PDSDA calculation does not include data from the following types of hospitals:

(i) out-of-state hospitals;

(ii) military hospitals;

(iii) new or newly enrolled hospitals;

(iv) in-state and out-of-state children's hospitals;

(v) inpatient psychiatric hospitals; and

(vi) state-owned teaching hospitals.

(C) If a payment division has fewer than 20 total base year claims, HHSC considers that payment division to be [~~statistically~~] invalid. Hospitals within that payment division are assigned a PDSDA equal to the mathematically closest valid PDSDA.

(D) [~~(7)~~] Minimum PDSDA. The minimum PDSDA of $1,600.00 is applied to any hospital with an HSDA equal to or less than $1,600.00.

(7) Payment Division Index (PDI).

(A) After all hospitals have been assigned a payment division number, HHSC will adjust the standard dollar amount for that payment division in accordance with paragraph (2) of this subsection. The resulting PDSDA is the reimbursement rate for all hospitals assigned that payment division number. The PDI is the list of all payment division numbers and the corresponding valid PDSDAs.

(B) If the resulting PDSDA is less than $1,600.00, the minimum PDSDA is applied.

(C) HHSC will assign a payment division designation to the universal mean plus the cost-of-living update used in the most recent rebasing calculation and will apply any adjustments under subparagraph (A) of this paragraph. The resulting amount is the PDSDA for the payment division assigned to hospitals listed in paragraph (8)(A) of this subsection.

(D) HHSC will assign a payment division designation to be used for a new hospital reimbursement rate. HHSC will calculate the rate as described in paragraph (8)(B) of this subsection and will apply any adjustments under subparagraph (A) of this paragraph, which will be the PDSDA for this designation.

(8) PDSDAs [~~PDSDA calculation~~] for specific types of hospitals.

(A) The following types of hospitals are assigned the PDSDA described in paragraph (7)(C) of this subsection [~~Universal Mean plus the cost-of-living update as specified in paragraph (4) of this subsection, as their PDSDA~~]:

(i) military hospitals;

(ii) out-of-state hospitals; and

(iii) newly enrolled hospitals.

(B) New Hospitals.

(i) For a new hospital [~~hospitals~~], HHSC will locate [~~assign a PDSDA that is three percentile points higher than~~] the universal mean [~~Universal Mean~~] in an array of all hospitals' base year costs per claim from lowest to highest. HHSC will then determine the group of claims located three percentile points above the universal mean. The new hospital is assigned the lowest dollar value claim within that percentile group, plus the cost-of-living update calculated at the most recent rebasing, as its PDSDA [~~as specified in paragraph (4) of this subsection~~].

(ii) This rate is effective [~~applies~~] for five years [~~from enrollment as a new Medicaid hospital~~] or until HHSC recalculates PDSDAs, whichever is earlier. After five years from the date HHSC applied the rate determined under clause (i) of this subparagraph, HHSC will assign the hospital the PDSDA described in subparagraph (A) of this paragraph if HHSC has not recalculated PDSDAs [~~enrollment, if HHSC has not recalculated PDSDAs, the hospital's PDSDA will be the Universal Mean~~].

(iii) [~~(ii)~~] A replacement facility constructed for a hospital that is currently enrolled as a Medicaid provider is reimbursed [~~by~~] using either the PDSDA of the existing provider or the PDSDA for new hospitals, whichever is greater.

(iv) Any PDSDA assigned under this subparagraph is subject to paragraph (7) of this subsection.

(9) Merged hospitals.

(A) Notice. When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare. HHSC will assign to the merged entity a PDSDA, including adjustments, determined using a methodology described in subparagraph (B) of this paragraph for all hospitals involved in the merger [~~during or after the base year but before the date of HHSC's final PDSDA notification letter, HHSC combines the amounts determined in paragraph (3)(A) of this subsection for all hospitals involved in the merger and calculates the HSDA and PDSDA for the merged entity as described for all other hospitals in this subsection~~].

(B) Determining a merged entity's PDSDA. HHSC will use the following process to determine a merged entity's PDSDA: [~~When two or more Medicaid participating hospitals merge after the base year and after the date of HHSC's final PDSDA notification letter, HHSC combines the original base year costs per claim determined in paragraph (3)(A) of this subsection from the most recent rebasing period for all hospitals involved in the merger. HHSC calculates a new HSDA for the merged entity and assigns a PDSDA equal to the mathematically closest valid PDSDA.~~]

(i) When HHSC recognizes a merged entity after HHSC has completed a rebasing in which each of the merging hospitals had been a participating provider and after which none of the merging hospitals were a replacement facility receiving the new-hospital rate as referenced in paragraph (8)(B)(iii) of this subsection, HHSC will determine the merged entity's PDSDA as follows:

(I) HHSC will calculate a new HSDA for the entity by combining the original base year cost per claim determined in paragraph (3)(A) of this subsection from the rebasing period for all hospitals involved in the merger;

(II) Using the resulting HSDA, HHSC will assign the merged entity to a payment division as described in paragraph (5) of this subsection. HHSC will reimburse the merged entity at the PDSDA corresponding to that payment division number within the PDI described in paragraph (7) of this subsection;

(III) HHSC will apply the resulting PDSDA to the surviving and terminated entities' Texas provider numbers retroactive to the date on which Medicare recognized the merged participating provider; and

(IV) HHSC will notify the merged entity of the PDSDA and the effective and termination dates of the Texas provider numbers for the involved hospitals.

(ii) When HHSC recognizes a merged entity involving at least one hospital having a PDSDA that is not based on the average base year cost per claim for that hospital, HHSC will assign the merged entity's PDSDA using the methodology in clause (iii) of this subparagraph. Hospitals in this category may include:

(I) New hospitals;

(II) Newly enrolled hospitals; and

(III) Hospitals assigned the new-hospital PDSDA based on construction of a replacement facility.

(iii) When HHSC recognizes a merged entity described in clause (ii) of this subparagraph, HHSC will determine the merged entity's PDSDA as follows:

(I) For each merging hospital, multiply the hospital's pre-merger PDSDA by the hospital's total number of claims for the state fiscal year claims file preceding the Medicare effective date of the merger;

(II) Sum the results of subclause (I) of this clause for all merging hospitals;

(III) Divide the result of subclause (II) of this clause by the total number of claims for all merging hospitals;

(IV) HHSC will assign the hospital to the payment division within the PDI that corresponds to the result of the calculation in subclause (III) of this clause;

(V) HHSC will apply the resulting PDSDA to the surviving and terminated entities' Texas provider numbers retroactive to the date on which Medicare recognized the merged participating provider; and

(VI) HHSC will notify the merged entity of the PDSDA and the effective and termination dates of the Texas provider numbers for the involved hospitals.

(iv) When HHSC recognizes a merged entity during a rebasing in which each of the merging hospitals had been a participating provider:

(I) HHSC will calculate a new HSDA by combining the amounts determined in paragraph (3)(A) of this subsection for all hospitals involved in the merger;

(II) Using the resulting HSDA, HHSC will assign a PDSDA for the merged entity as described for all other hospitals in this subsection;

(III) For any concurrent or retroactive reimbursements prior to the effective date of a rebasing, HHSC will assign the merged entity's PDSDA determined using either the methodology described in clause (i) or (iii) of this subparagraph.

(C) HHSC will not recalculate [~~Acquisitions and buyouts do not result in a recalculation of~~] the PDSDA of a [~~an acquired~~] hospital acquired in an acquisition or buyout unless the acquisition [~~acquisitions~~] or buyout resulted [~~buyouts result~~] in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the [~~The~~] acquired hospital [~~will continue being reimbursed~~] based on the PDSDA applied before the acquisition or buyout.

(10) TEFRA Cost for Rebasing. HHSC adjusts base year claims to arrive at a result based on cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and calculates TEFRA cost for rebasing as follows:

(A) HHSC adjusts each hospital's base year claims using the interim rate computed as a result of tentative or final cost reports covering the base year. The adjustments are applied to claims in months within the base year that coincide with months within the hospital's cost reporting periods.

(B) The TEFRA cost for rebasing is calculated by multiplying the Medicaid allowed charges for each base year claim by the interim rate described in subparagraph (A) of this paragraph.

(C) HHSC uses the tentative or final cost report settlement that is complete and available on the date HHSC sends the initial PDSDA notification letter to the hospital. The results of a tentative or final cost report settlement completed after the date HHSC sends the initial PDSDA notification letter to the hospital are not considered for purposes of this subsection.

(D) If there is no tentative or final cost report settlement available, the TEFRA cost for rebasing is calculated using an assigned interim rate of 50 percent.

(11) Correction of payment division error and reprocessing of claims.

(A) HHSC will place a hospital in the correct payment division if HHSC determines that the hospital was incorrectly assigned to a payment division due to a mathematical error or data entry error by HHSC.

(B) HHSC will reprocess all claims adjudicated during that state fiscal year that were paid to the hospital using the incorrect PDSDA by applying the corrected PDSDA to the claims. No corrections are made for claims adjudicated in previous state fiscal years.

(e) Diagnosis Related Groups (DRGs) Statistical Calculations. HHSC adopts the classification of diagnoses defined in the Medicare DRG prospective payment system unless a revision is required based on Texas claims data or other factors, as determined by HHSC. HHSC recalibrates the relative weights, mean length of stay, and day outlier threshold whenever the PDSDAs are recalculated.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the base year costs per claim as determined in subsection (d)(3)(A) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the universal mean [~~Universal Mean~~], resulting in the relative weight for the DRG.

(2) Recalibration of mean length of stay (MLOS). HHSC calculates a mean length of stay (MLOS) for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows:

(A) Calculates for all claims the standard deviations from the MLOS in paragraph (2) of this subsection;

(B) Removes each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS;

(C) Sums the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph;

(D) Divides the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph;

(E) Calculates one standard deviation for the result in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by two and adds that to the result in subparagraph (D) of this paragraph; resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than ten base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation.

(5) If one of the DRGs specific to an organ transplant has less than five base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation. In addition, HHSC adds a relative weight to account for the cost of procuring the organ to the Medicare relative weight for the DRG. HHSC uses the organ procurement costs published by the Acquisition of Organ Procurement Organization (AOPO). To calculate the relative weight for procurement, HHSC divides the average cost of organ procurement by the universal mean for all claims.

(f) Request for Review. Except as otherwise provided in this subsection, HHSC uses the following process for reviews and appeals.

(1) If a hospital believes that HHSC made a mathematical error or data entry error in calculating the hospital's PDSDA, the hospital may request a review of the disputed calculation.

(A) A review of the calculation of a hospital's PDSDA will not be granted if the disputed calculation is the result of the hospital's submission of incorrect data or the result of the use of an interim rate derived from a cost reporting period occurring before the base year.

(B) The hospital must submit to HHSC a written request for review and appropriate specific documentation supporting its contention that there has been a mathematical or data entry error. The written request for review must be printed on the hospital's letterhead. HHSC Rate Analysis must receive a written request for an informal review by hand delivery, United States (U.S.) mail, or special mail delivery no later than 45 calendar days from the date of the initial PDSDA notification letter. If the 45th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 45th calendar day is the final day the receipt of the written request will be accepted. HHSC will not grant extensions of the 45-day deadline.

(C) If the hospital disagrees with the outcome of the review, the hospital may formally appeal in accordance with §§357.481 - 357.490 of this title (relating to Hearings Under the Administrative Procedure Act).

(2) A hospital may not request a review pursuant to this paragraph regarding [~~appeal~~] the elements of the prospective payment methodology used by HHSC, including:

(A) the payment division methodologies, including the HSDA, PDI, and PDSDA calculations;

(B) the DRGs assigned through claims adjudication;

(C) the DRGs assigned to base year claims as a result of HHSC updating to a new version of the Medicare DRGs;

(D) the relative weights assigned to the DRGs;

(E) the adequacy of payments;

(F) the exclusion of claims that were not adjudicated and paid within the base year or six-month grace period; and

(G) the interim rate, computed as a result of tentative or final cost reports covering the base year that are completed after the date HHSC sends the initial PDSDA notification letter to the hospital.

(g) Reimbursements.

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the PDSDA for the hospital's payment division by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied. The PDSDA result in

subsection (d) of this section includes but is not limited to the following:

(A) capital costs;

(B) cost of indirect medical education;

(C) cost of malpractice insurance; and

(D) return on equity.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her twenty-first (21st) birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC [~~or its designee~~] calculates a day outlier payment adjustment for each claim as follows:

(i) determines whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (e)(3)(F) of this section;

(ii) if clause (i) of this subparagraph is true, subtracts the DRG day outlier threshold from the number of medically necessary days allowed for the claim;

(iii) multiplies the DRG relative weight by the PDSDA;

(iv) divides the result in clause (iii) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount;

(v) multiplies the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph; and

(vi) multiplies the result in clause (v) of this subparagraph by 70 percent.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows:

(i) to establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the universal mean [~~Universal Mean~~] of base year claims multiplied by 11.14 or the hospital's PDSDA multiplied by 11.14;

(ii) the full DRG prospective payment amount is multiplied by 1.5;

(iii) the cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph;

(iv) the cost outlier threshold is subtracted from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA); and

(v) the result in clause (iv) of this subparagraph is multiplied by 70 percent to determine the amount of the cost outlier payment.

(C) If an admission qualifies for both a day outlier and a cost outlier payment adjustment, HHSC pays the higher outlier payment.

(4) A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than 21 years of age, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows:

(i) multiplies the DRG relative weight by the PDSDA;

(ii) divides the result in clause (i) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount; and

(iii) to arrive at the transferring hospital's payment amount:

(I) multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(h) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports in rebasing rate years to recalculate PDSDAs and make [~~, in making~~] adjustments as described in subsection (d) of this section, and to complete [~~in completing~~] cost settlements for children's hospitals and state-owned teaching hospitals as outlined in §355.8054 and §355.8056 of this chapter.

(3) HHSC may require a hospital to provide additional data in a format and at a time specified as otherwise prescribed by HHSC.

(4) [~~(3)~~] Except as otherwise specified in subsection (i) of this section, there are no cost settlements for inpatient services under the prospective payment system in this section.

(5) [~~(4)~~] The cost settlement process is limited by the TEFRA target cap.

(i) Hospitals in counties with 50,000 or fewer persons and certain other hospitals.

(1) Hospitals are reimbursed under this subsection if, as of the most recent decentennial census, the hospital is:

(A) located in a county with 50,000 or fewer persons;

(B) a Medicare-designated Rural Referral Center (RRC) or Sole Community Hospital (SCH) not located in a metropolitan statistical area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) a Medicare-designated Critical Access Hospital (CAH).

(2) A hospital that qualifies under this subsection is reimbursed for a cost reporting period the greater of:

(A) All Medicaid payments based on the prospective payment system; or

(B) The cost-reimbursement methodology described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) without the imposition of the TEFRA target cap described in subsection (c)(34) [~~(h)(4)~~] of this section.

(3) The amounts in this subsection are calculated using the most recent data for Medicaid Fee-for-Service (FFS) and Primary Care Case Management (PCCM) inpatient services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902561
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.8065, Additional Reimbursement to Disproportionate Share Hospitals, and §355.8067, Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals. HHSC proposes new §355.8065, which will combine pertinent elements of §355.8065 and §355.8067 into one new rule. The proposed new §355.8065 is titled Disproportionate Share Hospital (DSH) Reimbursement Methodology.

Background and Justification

Hospitals participating in the Texas Medicaid program that meet the Disproportionate Share Hospital (DSH) program conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement through the DSH program. HHSC, as the Medicaid single state agency, establishes each hospital's eligibility for DSH reimbursement and the amount of reimbursement, as set out in new §355.8065.

Proposed new §355.8065 contains the following changes.

First, HHSC is combining pertinent language from existing §355.8065 and §355.8067 into new §355.8065. Current §355.8065 contains the DSH methodology for all hospitals other than state-owned teaching hospitals. Section 355.8067 contains the DSH reimbursement methodology for state-owned teaching hospitals. Language from both current rules will be included in new §355.8065 so that the qualification and payment methodologies for all DSH hospitals will be contained in one rule.

Second, the new rule modifies the rule language from current §355.8065 to account for changes required with the adoption of the Centers for Medicare and Medicaid Services' (CMS) DSH audit rule published on December 19, 2008, in the *Federal Register,* Vol. 73, No. 245, made effective on January 19, 2009. The federal DSH audit rule incorporates new reporting requirements and audit requirements that states must adhere to in order to be eligible to receive federal DSH funds. Under the new federal DSH audit rule, an independent certified audit must be performed for each completed Medicaid State Plan rate year beginning with the 2005 DSH program year. The audits will determine whether HHSC computed hospital-specific DSH limits in accordance with the stricter DSH audit rule definitions and whether the payments made to any hospital exceeded the audited hospital-specific limits. Beginning with the 2011 DSH program year, HHSC will recoup DSH overpayments made to individual hospitals identified during the audit process and redistribute the recouped funds to other qualified DSH hospitals, if sufficient amounts of uncompensated care expenses are available for additional DSH payments.

Third, proposed new §355.8065 does not include the language in current §§355.8065(f)(2), 355.8065(i), and 355.8067(j), which relate to Medicaid reform initiatives set out in Chapter 531, Texas Government Code, Subchapter N, Texas Health Opportunity Pool Trust Fund. HHSC is removing this language because the Medicaid reform initiatives were contingent on CMS's approval of Texas' Medicaid reform waiver, which is still pending.

Finally, HHSC adds language to clarify current practices and expands the definition section in proposed new §355.8065 to better explain the complex processes used in the DSH reimbursement program.

Section-by-Section Summary of new §355.8065

Subsection (a) is a high-level summary of the DSH program.

Subsection (b), the definition subsection, retains some prior definitions and adds definitions related to the new federal DSH audit

requirements. Beginning in 2011, definitions for "DSH data year" and "DSH program year" will coincide with the federal fiscal year beginning in 2011.

Subsection (c) defines DSH program eligibility requirements, with emphasis on application timelines. Subsection (c)(3)(E) contains new language describing the treatment of merged hospitals in each DSH program year.

Subsection (d) outlines the criteria and sources of data used to determine if a Medicaid hospital qualifies to participate in the DSH program. Qualification methodologies used in DSH calculations are clarified in the proposed rule language. Many of the calculations refer to the newly defined DSH program year and/or DSH data year.

Subsection (e) sets out the conditions for participation in the DSH program. A hospital must certify during the annual DSH application process that, as of the date of the certification, it meets and will continue to meet the conditions of participation during the DSH program year. Subsection (e)(6) requires compliance with the new federal audit requirements, which are set out in subsection (o) of the new rule.

Subsection (f) clarifies elements used to calculate a hospital-specific limit, including uninsured costs, Medicaid shortfall, and ratio of cost-to-charges. Federal audit rules require that payments received for emergency health services furnished to undocumented aliens under Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. No. 108-173, be included on the DSH application. Subsection (f)(2)(B) defines the Medicaid shortfall calculation. The Medicaid shortfall calculation includes charges and payments for dually eligible patients. The rule language also specifies that charges and payments included in the calculation of the Medicaid shortfall will be limited to covered Medicaid services and that claims submitted after the filing deadline will be excluded from the calculation. Subsection (f)(2)(C) changes the time period for which inflation factors will be applied in order to coincide with the DSH data year. Also, all time periods were changed to reflect the DSH program year or DSH data year, as applicable.

Subsection (g) explains that Texas receives an annual allotment of DSH federal funds to allocate to qualified hospitals in the DSH program. This subsection describes how the state allocates DSH funds between state and non-state hospitals.

Subsection (h) describes how DSH payments are calculated for qualifying hospitals and how frequently HHSC makes DSH payments to qualified hospitals. The subsection describes how individual hospitals will work with the state's Medicaid contractors to resolve data issues prior to the start of each DSH program year for which payments are calculated.

Subsection (i) clarifies that if a hospital is located in a federally declared natural disaster area, it may request special consideration in the calculation of its qualification for the DSH program. The rule language specifies how a hospital may apply for this consideration and how HHSC will determine qualification under this subsection.

Subsection (j) requires that HHSC notify each hospital applicant of its eligibility, qualification, and estimated payment amount. Subsection (j) also provides that a hospital may request a review of its ineligibility or disqualification for DSH payments or its estimated DSH payment amounts. The subsection also describes the review process, including the acceptable grounds for review and the procedure and timelines for requesting a review.

Subsection (k) discusses why and how DSH funds are held in reserve. Subsection (k) also provides that a hospital may request a review by HHSC if DSH payments are held in reserve.

Subsection (l) describes the recoupment and redistribution of DSH funds if an overpayment has been made to a hospital.

Subsection (m) specifies that, if a hospital fails to maintain and provide adequate documentation to support its data, HHSC will exclude those data from DSH calculations for that hospital.

Subsection (n) discusses the eligibility of hospitals that voluntarily withdraw from the DSH program for future DSH payments.

Subsection (o) provides an overview of the DSH audit process. Subsection (o)(1) discusses the new, federally required audits. Subsection (o)(1)(F) allows HHSC to recover from an audited hospital the costs of such audit.

Other changes were made throughout the rule to update references, move language, and reorder provisions as necessary to reflect changes.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five-year period the proposed rules are in effect, there would be a cost to the state of $2,352,607 in general revenue each year as a result of enforcing or administering the rules. The agency would be required to hire an independent audit firm to audit the final DSH hospital-specific limits and payments for each DSH program year and additional staff would be needed. If HHSC recovers from audited hospitals the costs of such audits, the impact to general revenue would be zero, as the state share of the cost of the DSH audits would be funded with recovered costs. The amount of DSH funds allocated to each state is determined by the federal government and HHSC does not anticipate that the changes proposed in this rule will impact the total DSH funds received by the state. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Language in the proposed new rule will allow HHSC to recover audit costs that HHSC incurs, which will offset the costs of the federal DSH audits.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the rules are in effect, the public benefit expected as a result of enforcing the rules will be that the state will conform to the federal audit requirements relating to the DSH program. In addition, the revisions contained in the proposed new rule are made to assist interested parties in understanding the DSH reimbursement methodology by providing clearer language that can be more easily understood.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government

Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Diana Miller, Senior Rate Analyst in the Rate Analysis Department, by mail at HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, by fax to (512) 491-1436, or by e-mail to diana.miller@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for July 14, 2009, from 8:00 a.m. to 12:00 p.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas 78758. Persons requiring further information, special assistance, or accommodations should contact Diana Miller at (512) 491-1436.

1 TAC §355.8065, §355.8067

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Human Resources Code Chapter 32.

The proposal affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8065. Additional Reimbursement to Disproportionate Share Hospitals.
§355.8067. Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902562

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

1 TAC §355.8065

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Human Resources Code Chapter 32.

The proposal affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.8065. Disproportionate Share Hospital (DSH) Reimbursement Methodology.

(a) Introduction. Hospitals participating in the Texas Medical Assistance (Medicaid) program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement from the disproportionate share hospital (DSH) fund. HHSC will establish each hospital's eligibility for and amount of reimbursement. This section applies to all hospitals that participate in the DSH program.

(b) Definitions. For the purposes of this section, the following words and terms have the following meanings unless the context clearly indicates otherwise.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payer.

(2) Available DSH funds--The annual allotment of funds that may be reimbursed to all DSH-eligible providers.

(3) Bad debt--A debt arising when there is nonpayment on behalf of an individual who has third-party coverage.

(4) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid.

(5) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to indigent individuals, either directly or through other nonprofit or public outpatient clinics, hospitals, or health care organizations. A hospital must set the income level for eligibility for charity care consistent with the criteria established in §311.031, Texas Health and Safety Code.

(6) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a DSH data year. These charges do not include bad debt charges, contractual allowances, or discounts given to other legally liable third-party payers.

(7) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(8) Disproportionate share hospital--A hospital identified by HHSC that meets the Disproportionate Share Hospital (DSH) program conditions of participation and that serves a disproportionate share of Medicaid and/or indigent patients.

(9) DSH data year--A twelve-month period from which HHSC will compile data to determine DSH program qualification and payment.

(A) For DSH program year 2010, the DSH data year will be each hospital's fiscal year ending in calendar year 2008.

(B) For DSH program years beginning in 2011 and thereafter, the DSH data year will be October 1 through September 30 two years prior to the DSH program year. For example, the DSH data year is 2009 (October 1, 2008 - September 30, 2009) for the 2011 DSH program year (October 1, 2010 - September 30, 2011).

(10) DSH program year--The twelve-month period beginning October 1 and ending September 30. This corresponds with the Medicaid state plan rate year.

(11) Dually eligible patient--A patient who is simultaneously eligible for Medicare and Medicaid. The term excludes a Medicare beneficiary for whom Medicaid pays only Medicare deductibles, coinsurance, Medicare Part A premiums, or Medicare Part B premiums.

(12) HHSC--The Texas Health and Human Services Commission or its designee.

(13) Hospital fiscal year--A twelve-month accounting period designated by a hospital.

(14) Hospital-specific limit--The maximum amount a hospital may receive in a DSH program year, based on costs arising from individuals receiving hospital services who are Medicaid eligible or uninsured, not costs arising from individuals who have third-party coverage.

(A) An interim hospital-specific limit will be trended forward to the DSH program year using an inflation update factor to account for inflation since the DSH data year.

(B) A final hospital-specific limit will be calculated using actual DSH program year cost and payment data.

(15) Independent certified audit--An audit that is conducted by an auditor that operates independently from the Medicaid agency and the audited hospitals and that is eligible to perform the DSH audit required by CMS.

(16) Indigent individual--An individual classified by a hospital as eligible for charity care.

(17) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(18) Inpatient day--Each day that an individual is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere. The term includes observation days, rehabilitation days, psychiatric days, and newborn days. The term does not include swing bed days or skilled nursing facility days.

(19) Inpatient revenue--Amount of gross inpatient revenue (charges) derived from the most recent completed Medicaid cost report or reports related to the applicable DSH data year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, other nonhospital revenue, and revenue not identified by the hospital.

(20) Institution for Mental Disease (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(21) Low-income days--Number of inpatient days attributed to indigent patients.

(22) Low-income utilization rate--A DSH qualification criterion calculated as described in subsection (d)(2) of this section.

(23) Mean Medicaid inpatient utilization rate--The average of all active Medicaid hospitals' Medicaid inpatient utilization rates.

(24) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(25) Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(26) Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medical Assistance program.

(27) Medicaid inpatient utilization rate--A DSH qualification criterion calculated as described in subsection (d)(1) of this section.

(28) Medicaid shortfall--The unreimbursed cost of Medicaid eligible services (inpatient and outpatient) that a hospital furnishes to Medicaid patients.

(29) Medicaid state plan rate year--The twelve-month period corresponding to the DSH program year.

(30) MSA--Metropolitan Statistical Area as defined by the United States Office of Management and Budget. MSAs with populations greater than or equal to 121,000, according to the most recent decennial census, are considered "the largest MSAs."

(31) Obstetrical services--The medical care of a woman during pregnancy, delivery, and the post-partum period provided at the hospital listed on the DSH application.

(32) PMSA--Primary Metropolitan Statistical Area as defined by the United States Office of Management and Budget.

(33) Ratio of cost-to-charges (inpatient only)--An all-payer ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(34) Ratio of cost-to-charges (inpatient and outpatient)--A Medicaid cost report-derived all-payer ratio that covers all applicable hospital costs and charges relating to patient care, inpatient and outpatient. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(35) Rural area--Area outside an MSA or a PMSA.

(36) State chest hospital--A public health facility operated by the Department of State Health Services designated for the care and treatment of patients with tuberculosis.

(37) State fiscal year--September 1 through August 31.

(38) State-owned teaching hospital--A hospital owned and operated by a state university or other state agency.

(39) Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payer.

(40) Total Medicaid inpatient days--Total number of inpatient days based on adjudicated claims data for covered services for state fiscal year 2008 for DSH program year 2010. Beginning with DSH program year 2011, the relevant DSH data year will be used for Medicaid-eligible patients.

(A) The term includes:

(i) Medicaid-eligible days of care adjudicated by managed care organizations;

(ii) days that were denied payment for spell-of-illness limitations;

(iii) days attributable to individuals eligible for Medicaid in other states, including dually eligible patients;

(iv) days with adjudicated dates during the period; and

(v) days for dually eligible patients.

(B) The term excludes:

(i) days attributable to Medicaid patients between the ages of 21 and 65 in an IMD; and

(ii) days denied for late filing and other reasons.

(41) Total Medicaid inpatient hospital payments--Total amount of Medicaid funds that a hospital received for adjudicated claims for inpatient services during the DSH data year. The term includes payments that the hospital received:

(A) for inpatient services from managed care organizations; and

(B) for patients eligible for Medicaid in other states.

(42) Total state and local revenue--Total amount of state and local payments that a hospital received for inpatient care during the DSH data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, Kidney Health Care, and certain Children's Health Insurance Program (CHIP) payments. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(43) Uninsured cost--The cost to a hospital of providing health care services to uninsured patients.

(44) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services. Subject to federal statutes and regulations, an individual whose third-party coverage does not include the service provided is considered by HHSC to be uninsured for that service.

(45) Upper Payment Limit (UPL) program--Supplemental Medicaid payments made to certain eligible hospitals for inpatient and outpatient services based on State and Federal guidelines.

(46) Urban area--Area inside an MSA or PMSA.

(47) Weighted low-income days--Low-income days that are adjusted based on the population of the MSA or PMSA in which a hospital is located.

(48) Weighted Medicaid days--Medicaid days that are adjusted based on the population of the MSA or PMSA in which a hospital is located.

(c) Eligibility. To be eligible to participate in the DSH program, a hospital must:

(1) be enrolled as a Medicaid hospital in the State of Texas;

(2) have received a Medicaid payment for a claim that was adjudicated during the relevant time period:

(A) for DSH program year 2010, adjudicated during state fiscal year 2008; and

(B) beginning with DSH program year 2011 and thereafter, adjudicated during the relevant DSH data year.

(3) apply annually by completing the application packet received from HHSC by the deadline specified in the packet.

(A) Only a hospital that meets the condition specified in paragraph (2) of this subsection will receive an application packet from HHSC.

(B) The application may request self-reported data that HHSC deems necessary to determine each hospital's eligibility. HHSC may audit self-reported data.

(C) A hospital that fails to submit a completed application by the deadline specified by HHSC will not be eligible to participate in the DSH program in the year being applied for or to appeal HHSC's decision.

(D) For purposes of DSH eligibility, a multi-site hospital is considered one provider unless it submits separate Medicaid cost reports for each site. If a multi-site hospital submits separate Medicaid cost reports for each site, for purposes of DSH eligibility, it must submit a separate DSH application for each eligible site.

(E) HHSC will consider a merger of two or more hospitals for purposes of the DSH program for any hospital that submits a CMS tie-in notice prior to the DSH program year. Otherwise, HHSC will determine the merged entity's eligibility for the subsequent DSH program year. Until the time that the merged hospitals are determined eligible for payments as a merged hospital, each of the merging hospitals will continue to receive any DSH payments to which it was entitled prior to the merger.

(d) Qualification. For each DSH program year, in addition to meeting the eligibility requirements, applicants must meet at least one of the following qualification criteria, which are determined using information from a hospital's application, the annual hospital survey conducted under Chapter 311, Health and Safety Code, or from HHSC's Medicaid contractors, as specified by HHSC:

(1) Medicaid inpatient utilization rate. A hospital's inpatient utilization rate is calculated by dividing the hospital's Medicaid inpatient days by its total inpatient census days for the DSH data year.

(A) Rural hospital: A rural hospital must have a Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(B) Urban hospital: An urban hospital must have a Medicaid inpatient utilization rate that is at least one standard deviation

above the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(2) Low-income utilization rate. A hospital must have a low-income utilization rate greater than 25 percent.

(A) The low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated in clauses (i) and (ii) of this subparagraph:

(i) The sum of the total Medicaid inpatient hospital payments and the total state and local revenue paid to the hospital for inpatient care in the DSH data year, divided by a hospital's gross inpatient revenue multiplied by the hospital's ratio of cost-to-charges (inpatient only) for the same period: (Medicaid Inpatient Hospital Payments + Total State and Local Revenue)/(Gross Inpatient Revenue x Ratio of Costs to Charges).

(ii) Inpatient charity charges in the DSH data year minus the amount of payments for inpatient hospital services received directly from state and local governments, excluding all Medicaid payments, in the DSH data year, divided by the gross inpatient revenue in the same period: (Total Inpatient Charity Charges - Total State and Local Payments)/Gross Inpatient Revenue.

(iii) If a hospital fails to allocate state and local tax revenue between inpatient and outpatient revenue, HHSC will make the proportional allocation using data contained in the latest available Medicaid cost report(s) or Medicaid cost report for the DSH data year.

(B) HHSC will determine the ratio of cost-to-charges (inpatient only) as follows:

(i) HHSC will first compute the ratio of total inpatient revenue to total patient revenue using Worksheet G-2, Part I, of the Medicaid cost report.

(ii) The total costs from Worksheet B, Part I, are then multiplied by this computed ratio to determine the total inpatient costs.

(iii) To calculate the ratio of cost-to-charges (inpatient only), HHSC will divide the computed inpatient costs of Worksheet B, Part I, by the inpatient revenue of Worksheet G-2, Part I.

(iv) HHSC will exclude those inpatient costs and inpatient revenue for nonhospital services such as ambulance, rural health clinics, primary home care, home health agencies, hospice, and skilled nursing facilities.

(3) Medicaid inpatient days.

(A) A hospital must have Medicaid inpatient days at least one standard deviation above the mean Medicaid inpatient days for all hospitals participating in the Medicaid program, except;

(B) A hospital in an urban county with a population of 250,000 persons or fewer, according to the most recent decennial census, must have Medicaid inpatient days at least 70 percent of the sum of the mean Medicaid inpatient days for hospitals in this subset plus one standard deviation above that mean.

(4) Children's hospitals. Children's hospitals that do not otherwise qualify as disproportionate share hospitals will be deemed disproportionate share hospitals.

(5) Merged hospitals. Merged hospitals are subject to subsection (c)(3)(E) of this section. HHSC will aggregate the data used to determine qualification under this subsection from the merged hospitals to determine whether the single Medicaid provider that results from the merger qualifies as a Medicaid disproportionate share hospital.

(e) Conditions of participation. HHSC will require each hospital to certify during the application process that, as of the date of the certification, it meets and will continue to meet during the DSH program year the following conditions of participation:

(1) Two-physician requirement. A hospital must have at least two licensed physicians (doctor of medicine or osteopathy) who have hospital staff privileges and who have agreed to provide nonemergency obstetrical services to individuals who are entitled to medical assistance for such services. The two-physician requirement does not apply to a children's hospital or to a hospital that was operating but did not offer nonemergency obstetrical services as of December 22, 1987.

(2) Medicaid inpatient utilization rate. Each hospital must have a Medicaid inpatient utilization rate of at least one percent. A hospital's inpatient utilization rate is calculated by dividing the hospital's Medicaid inpatient days by its total inpatient census days.

(3) Trauma system.

(A) Disproportionate share hospitals must obtain and maintain a trauma facility designation as defined in §§773.111 - 773.120, Health and Safety Code, and consistent with 25 TAC §157.125 (relating to Requirements for Trauma Facility Designation).

(B) HHSC will receive an annual report from the Office of EMS/Trauma Systems Coordination regarding hospital participation in regional trauma system development, application for trauma facility designation, and trauma facility designation status. HHSC will use this report to confirm compliance with this condition of participation by a hospital applying for DSH funds.

(4) Maintenance of local funding effort. A hospital district in one of the state's largest MSAs or in a PMSA must not reduce local tax revenues to its associated hospitals as a result of disproportionate share funds received by the hospital. For this provision to apply, the hospital must have more than 250 licensed beds.

(5) Access to records. HHSC must have access to the hospital's records and accounting systems during regular business hours.

(6) Compliance with audit requirements. A hospital must agree to comply with the audit requirements described in subsection (o) of this section.

(7) Merged hospitals. Merged hospitals are subject to subsection (c)(3)(E) of this section. If HHSC receives the CMS tie-in notice prior to the DSH program year, the merged entity must meet all conditions of participation. If HHSC does not receive the CMS tie-in notice prior to the DSH program year, any proposed merging hospitals that are receiving DSH payments must continue to meet all conditions of participation as individual hospitals to continue receiving DSH payments for the remainder of the DSH program year.

(f) Calculating a hospital-specific limit. Using information from each hospital's DSH application and HHSC's Medicaid contractors, HHSC annually will determine the interim hospital-specific limit for each hospital applying for DSH funds in compliance with paragraphs (1) - (3) of this subsection. HHSC will also determine the final hospital-specific limit in compliance with paragraph (4) of this subsection.

(1) HHSC will calculate a hospital's interim hospital-specific limit by adding the hospital's net uninsured costs and its Medicaid shortfall, both adjusted for inflation.

(2) HHSC will determine the individual components of the hospital-specific limit as follows:

(A) Uninsured costs.

(i) Each hospital will report in its DSH application its inpatient and outpatient charges incurred for services to uninsured patients admitted during the DSH data year.

(ii) Each hospital will report in its DSH application all payments received for services to uninsured patients admitted during the DSH data year.

(I) For purposes of this rule, a payment received is any payment from an uninsured patient or from a third party (other than an insurer) on the patient's behalf, including payments received for emergency health services furnished to undocumented aliens under section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, except that;

(II) State and local payments to hospitals for indigent care are not included as payments made by or on behalf of uninsured patients.

(iii) HHSC will convert uninsured charges to uninsured costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.

(iv) HHSC will subtract all payments received under clause (ii) of this subparagraph from the uninsured costs under clause (iii) of this subparagraph, resulting in net uninsured costs.

(B) Medicaid shortfall.

(i) HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid charge and payment data for claims adjudicated during the DSH data year for all active Medicaid participating hospitals. There are circumstances, including the following, in which HHSC will request modifications to the adjudicated data.

(I) HHSC will include as appropriate:

(-a-) Charges and payments associated with the care of dually eligible patients, including Medicare charges and payments; and

(-b-) Charges for claims or portions of claims that were not paid because they exceeded the spell-of-illness limitation.

(II) HHSC will exclude:

(-a-) Charges associated with services not covered by Medicaid; and

(-b-) Charges associated with claims submitted after the 95-day filing deadline.

(ii) Upon receipt of the requested data from the Medicaid contractors, HHSC will review the information for accuracy and make additional adjustments as necessary.

(iii) HHSC will convert the Medicaid charges to Medicaid costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.

(iv) HHSC will subtract each hospital's Medicaid payments, including cost report settlements and graduate medical education payments, from its Medicaid costs. For purposes of calculating the interim hospital-specific limit for non-state hospitals, supplemental payments received under the Upper Payment Limit program are not included in the hospital's Medicaid payments.

(v) If a hospital's payments are less than its costs, the hospital has a positive Medicaid shortfall. If a hospital's payments are greater than its costs, the hospital has a negative Medicaid shortfall.

(C) Inflation adjustment.

(i) HHSC will trend each hospital's hospital-specific limit using the inflation update factor as defined in subsection (b)(17) of this section.

(ii) HHSC will use the inflation update factors for the period beginning at the midpoint of each DSH data year to the midpoint of the DSH program year.

(iii) HHSC will multiply each hospital's sum of the net uninsured costs and Medicaid shortfall by the inflation update factor to obtain its interim hospital-specific limit.

(3) Ratio of cost-to-charges. HHSC will calculate the ratio of cost-to-charges used in setting hospital-specific limits in conformity with the following conditions and procedures:

(A) HHSC will convert the total Medicaid charges related to adjudicated claims for each hospital to cost, utilizing a calculated ratio of cost-to-charges (inpatient and outpatient). The ratio is the total allowable costs divided by the total allowable charges, as described in subparagraph (C) of this paragraph.

(B) HHSC will calculate the ratio of cost-to-charges using information from the hospital's Medicaid cost report or reports corresponding to the DSH data year. In the absence of a Medicaid cost report for that period, HHSC will use the latest available submitted Medicaid cost report or reports.

(C) To determine the ratio of cost-to-charges (inpatient and outpatient) for each hospital, HHSC will divide the costs reported on the Medicaid cost report, Worksheet B, Part 1, by the total charges reported on Worksheet C, Part 1. HHSC will exclude those costs and charges for nonhospital services such as ambulance, rural health clinics, primary home care, home health agencies, hospice, and skilled nursing facilities.

(4) Final hospital-specific limit.

(A) HHSC will calculate the individual components of a hospital's final hospital-specific limit using the calculation set out in paragraphs (2) and (3) of this subsection, except that:

(i) HHSC will use the hospital's actual costs incurred and payments received during the DSH program year.

(ii) HHSC will include supplemental payments made under the Upper Payment Limit program in the computation of each hospital's Medicaid shortfall.

(iii) HHSC will use the actual ratio of cost-to-charges for the DSH program year for each hospital.

(B) The final hospital-specific limit will be used in the audit conducted under subsection (o) of this section.

(g) Distribution of available DSH funds. DSH payments are subject to the availability of appropriated state and federal funds. Before the start of each DSH program year, CMS publishes the federal DSH allotment for each state. Based on CMS's DSH allotment for Texas, and subject to appropriated state funds and other factors, HHSC will determine the total amount of DSH funds that will be available for distribution to eligible qualifying DSH hospitals during the DSH program year. HHSC will distribute the available DSH funds among such hospitals using the following priorities:

(1) State-owned teaching hospitals and state chest hospitals. HHSC may reimburse state-owned teaching hospitals and state chest hospitals an amount less than or equal to their interim hospital-specific limits.

(2) IMDs.

(A) Limits. Aggregate payments made to IMD facilities statewide are subject to federally mandated reimbursement limits.

(B) State IMDs. HHSC may reimburse a state-owned or state-operated IMD an amount less than or equal to its interim hospital-specific limit.

(C) Non-state IMDs. A non-state IMD is reimbursed as other non-state hospitals as described in subsection (h)(2) of this section.

(D) Amount. A non-state IMD that satisfies the DSH requirements and provides inpatient psychiatric services receives up to 100 percent of its interim hospital-specific limit within available DSH funds. If sufficient DSH funds are not available to fully fund interim hospital-specific limits, each hospital's funding is adjusted pro rata within the DSH funds available under federal law as described in subparagraph (A) of this paragraph.

(3) Other non-state hospitals. HHSC distributes the remaining DSH funds, if any, to other qualifying hospitals. The available DSH funds for the remaining hospitals equal the lesser of the funds remaining in the state's annual disproportionate share allotment or the sum of qualifying hospitals' interim hospital-specific limits.

(h) DSH payment calculation and frequency.

(1) Medicaid data verification.

(A) On or about April 1 of each year, HHSC will send each Medicaid participating hospital a report of adjudicated data received from Medicaid contractors reflecting the hospital's Medicaid days, Medicaid charges, and Medicaid payments during the DSH data year.

(B) A hospital must communicate directly with the appropriate Medicaid contractors to request correction of any data the hospital believes is inaccurate or incomplete.

(C) Each Medicaid contractor will submit a final report to HHSC by July 1 of each year or a date specified by HHSC, which will include all agreed-upon corrections resulting from requests submitted by hospitals. Unless a hospital contacts HHSC pursuant to subparagraph (D) of this paragraph, HHSC will use the corrected report for DSH calculations described in this rule.

(D) At a hospital's request, HHSC will review instances in which a hospital and a Medicaid contractor cannot resolve disputes concerning data included in or excluded from the final report. HHSC will make the final determination in such a case and notify the hospital of the final determination.

(E) A hospital's right to request a review of eligibility, qualification, and estimated payment amount is addressed in subsection (j) of this section.

(2) Payment calculation for non-state hospitals. HHSC will calculate payments for a non-state hospital in the following manner unless the hospital's proposed reimbursement would exceed its interim hospital-specific limit. Payments will be made based on inpatient Medicaid days and low-income days, both of which have been weighted by the factors described in subparagraph (C) of this paragraph.

(A) Inpatient Medicaid days. HHSC will base each hospital's inpatient Medicaid days on the data reported by HHSC's Medicaid contractors. For DSH program year 2010, the data will come from state fiscal year 2008, and beginning with DSH program year 2011, the data will come from the relevant DSH data year.

(B) Low-income days. HHSC will calculate low-income days by multiplying a hospital's total inpatient census days for the DSH data year by its low-income utilization rate.

(C) Weighting factors. All MSA population data which are used to determine the weighting factors are from the most recent decennial census.

(i) Children's hospitals are weighted at 1.25 because of the special nature of the services they provide.

(ii) Hospitals with more than 250 licensed beds, associated with hospital districts in the state's largest MSAs, will receive weights based proportionally on the MSA population. The specific weights for these hospitals are as follows:

(I) MSAs with populations greater than or equal to 121,000 and less than 300,000 are weighted at 2.5.

(II) MSAs with populations greater than or equal to 300,000 and less than 1,000,000 are weighted at 2.75.

(III) MSAs with populations greater than or equal to 1,000,000 and less than 3,000,000 are weighted at 3.0.

(IV) MSAs with populations greater than or equal to 3,000,000 are weighted at 3.5.

(iii) The weighting factor for all other hospitals is 1.0.

(iv) HHSC may change the weights as needed in the DSH program to address changes in program size.

(D) Allocation of DSH funds to non-state urban and rural hospitals.

(i) HHSC will divide the amount determined in subsection (g)(3) of this section into two parts:

(I) One-half of the funds will reimburse each qualifying hospital by its percent of the total inpatient Medicaid days.

(II) One-half of the funds will reimburse each qualifying hospital by its percent of low income days.

(ii) After applying clause (i) of this subparagraph, HHSC will test to determine whether qualifying hospitals in rural areas will receive 5.5 percent or more of the funds determined in subsection (g)(3) of this section.

(I) If hospitals in rural areas receive at least 5.5 percent of the funds, HHSC will reimburse them as calculated in clause (i) of this subparagraph.

(II) If hospitals in rural areas will not receive at least 5.5 percent of the funds, HHSC will allocate 5.5 percent of the funds in subsection (g)(3) of this section for reimbursement of such hospitals. After the reallocation of funds to meet the 5.5 percent test, HHSC will determine payment amounts to each urban and rural hospital, as described in clause (i) of this subparagraph.

(3) DSH distribution methodology for non-state hospitals.

(A) HHSC will calculate the number of weighted Medicaid inpatient days and weighted low-income days for each qualifying hospital as described in paragraph (2) of this subsection.

(B) Using the results obtained under subparagraph (A) of this paragraph, HHSC will calculate each qualifying hospital's annual DSH payment based on the following formula:
Figure: 1 TAC §355.8065(h)(3)(B)

(C) HHSC will compare the projected payment for each qualifying hospital with its interim hospital-specific limit. If the hospital's projected payment is greater than its interim hospital-specific limit, HHSC will reduce the hospital's payment to its interim hospital-specific limit.

(D) If there are funds remaining out of the total available DSH funds because some hospitals have had their DSH payments reduced to their interim hospital-specific limits, HHSC will distribute the excess funds to qualifying hospitals that had projected payments below their interim hospital-specific limits as follows. HHSC will:

(i) Calculate the difference between a hospital's interim hospital-specific limit and its projected DSH payment;

(ii) Add all of the differences from clause (i) of this subparagraph;

(iii) Calculate a ratio for each hospital by dividing the difference from clause (i) of this subparagraph by the sum from clause (ii) of this subparagraph; and

(iv) Multiply the ratio from clause (iii) of this subparagraph by the remaining available DSH funds.

(E) Each hospital's total DSH payment (including the redistribution of excess funds) may not exceed its interim hospital-specific limit.

(4) Payment Frequency. HHSC may reimburse DSH qualifying hospitals on a monthly basis. Monthly payments equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments are not made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements.

(5) If a hospital that is receiving DSH funds closes, loses its license, or loses its Medicare or Medicaid eligibility during a DSH program year, HHSC will reallocate that hospital's disproportionate share funds going forward among all DSH providers that are eligible for additional payments.

(i) Hospital located in a federal natural disaster area. A hospital that is located in a county that is declared a federal natural disaster area and that was participating in the DSH program at the time of the natural disaster may request that HHSC determine its DSH qualification and payment amount under this subsection for the next DSH program year. The following conditions and procedures will apply to all such requests received by HHSC:

(1) The hospital must submit its request in writing to HHSC with its annual DSH application.

(2) If HHSC approves the request, HHSC will determine the hospital's DSH qualification using the hospital's data from the DSH data year prior to the natural disaster. However, HHSC will calculate the one percent Medicaid minimum utilization rate, the interim hospital-specific limit, and the payment amount using data from the DSH data year. The final hospital- specific limit will be computed based on the actual data for the DSH program year.

(3) HHSC will notify the hospital of the qualification and payment determinations.

(4) A hospital may request an administrative review of HHSC's qualification and payment determinations. The review will be conducted under the provisions of subsection (j) of this section.

(j) Review of HHSC determination of eligibility, qualification, and estimated payment amount.

(1) Prior to the first payment of the DSH program year, HHSC will notify each hospital that applied to participate in the DSH program whether it is eligible and qualified to participate. An eligible hospital will be notified of its estimated annual DSH payment amount.

(2) A hospital that either does not qualify or disputes the payment amount may request a review by HHSC in accordance with paragraph (3) of this subsection. Initial qualification determinations and estimated payment amounts for all hospitals may change depending on the outcome of the review.

(3) Except as specified in paragraph (6) of this subsection, a request for review must be submitted in writing to HHSC within 15 calendar days of the date the hospital received the notification under this subsection.

(A) The written request for review and all supporting documentation must be sent to HHSC's Director of Hospital Reimbursement, Rate Analysis Department.

(B) The request must allege the specific factual or calculation errors the hospital contends HHSC made that, if corrected, would result in the hospital's qualifying for payments or receiving a more accurate payment amount.

(C) Beginning with DSH program year 2011, a hospital may not base a request for review on a claim that the data the hospital or a Medicaid contractor submitted to HHSC is incorrect or incomplete. The hospital will have an opportunity to resolve disputed data with the Medicaid contractor under subsection (h)(1) of this section.

(D) The request may not dispute HHSC's eligibility, qualification, or payment methodologies.

(E) Within 30 calendar days of the date of the notification, the hospital must submit documentation supporting its allegations.

(4) The review is:

(A) limited to the hospital's allegations of factual or calculation errors;

(B) supported by documentation submitted by the hospital or used by HHSC in making its original determination;

(C) solely a paper review; and

(D) not an adversarial hearing.

(5) HHSC will notify the hospital of the results of the review.

(6) HHSC will not consider requests for review submitted after the deadline specified in paragraph (3) of this subsection unless HHSC subsequently notifies a hospital that it no longer qualifies for DSH funding. In that case, the hospital may request a review in accordance with paragraph (3) of this subsection.

(k) Disproportionate share funds held in reserve.

(1) If HHSC has reason to believe that a hospital is not in compliance with the conditions of participation listed in subsection (e) of this section, HHSC will notify the hospital of possible noncompliance. Upon receipt of such notice, the hospital will have 30 calendar days to demonstrate compliance.

(2) If the hospital demonstrates compliance within 30 calendar days, HHSC will not hold the hospital's DSH payments in reserve.

(3) If the hospital fails to demonstrate compliance within 30 calendar days, HHSC will notify the hospital that HHSC is holding the hospital's DSH payments in reserve. HHSC will release the funds corresponding to any period for which a hospital subsequently demonstrates that it was in compliance. HHSC will not make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(1) and (2) of this section. HHSC may choose not to make DSH payments for any period in

which the hospital is out of compliance with the conditions of participation listed in subsection (e)(3) - (7) of this section.

(4) If a hospital's DSH payments are being held in reserve on the date of the last payment in the DSH program year, and no request for review is pending under paragraph (5) of this subsection, the amount of the payments is not restored to the hospital, but is divided proportionately among the hospitals receiving a last payment.

(5) Hospitals that have DSH payments held in reserve may request a review by HHSC.

(A) The hospital's written request for a review must:

(i) be sent to HHSC's Director of Hospital Reimbursement, Rate Analysis Department;

(ii) be received by HHSC within 15 calendar days after notification that the hospital's DSH payments are held in reserve; and

(iii) contain specific documentation supporting its contention that it is in compliance with the conditions of participation.

(B) The review is:

(i) limited to allegations of noncompliance with conditions of participation;

(ii) limited to a review of documentation submitted by the hospital or used by HHSC in making its original determination; and

(iii) not conducted as an adversarial hearing.

(C) HHSC will conduct the review and notify the hospital requesting the review of the results.

(l) Recovery of DSH funds. Notwithstanding any other provision of this section, HHSC will recoup any overpayment of DSH funds made to a hospital, including an overpayment that results from HHSC error or that is identified in an audit. These funds will be redistributed proportionately to DSH providers that are eligible for additional payments.

(m) Failure to provide supporting documentation. HHSC will exclude data from DSH calculations under this section if a hospital fails to maintain and provide adequate documentation to support that data.

(n) Voluntary withdrawal from the DSH program.

(1) HHSC will recoup all DSH payments made during the same DSH program year to a hospital that voluntarily terminates its participation in the DSH program. HHSC will redistribute the recouped funds according to the distribution methodology described in this section to DSH providers eligible for additional payments.

(2) A hospital that voluntarily terminates from the DSH program will be ineligible to receive payments for the next DSH program year after the hospital's termination.

(3) If a hospital does not apply for DSH funding in the DSH program year following a DSH program year in which it received DSH funding, even though it would have qualified for DSH funding in that year, the hospital will be ineligible to receive payments for the next DSH program year after the year in which it did not apply.

(4) The hospital may reapply to receive DSH payments in the second DSH program year after the year in which it did not apply.

(o) Audit process.

(1) Independent certified audit. HHSC is required by the Social Security Act (Act) to annually complete an independent certified audit of each hospital participating in the DSH program in Texas. Audits will comply with all applicable federal law and directives, including the Act, the Omnibus Budget and Reconciliation Act of 1993 (OBRA '93), the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), pertinent federal rules, and any amendments to such provisions.

(A) Each audit report will contain the verifications set forth in 42 CFR §455.304(d).

(B) The sources of data utilized by HHSC, the hospitals, and the independent auditors to complete the DSH audit and report include:

(i) The Medicaid cost report;

(ii) Medicaid Management Information System data; and

(iii) Hospital financial statements and other auditable hospital accounting records.

(C) A hospital must provide HHSC or the independent auditor with the necessary information in the time specified by HHSC or the independent auditor.

(D) A hospital that fails to provide requested information or to otherwise comply with the independent certified audit requirements may be subject to a withholding of Medicaid disproportionate share payments or other appropriate sanctions.

(E) HHSC will recoup any overpayment of DSH funds made to a hospital that is identified in the independent certified audit and will redistribute the recouped funds proportionately to DSH providers that are eligible for additional payments subject to their final hospital-specific limits.

(F) HHSC may recover from audited non-state hospitals the costs of audits that are required by federal law.

(2) HHSC may conduct or require additional audits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902564
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

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DIVISION 10. BIRTHING CENTER SERVICES

1 TAC §355.8181

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Health and Human Services Commission (HHSC) proposes to repeal the Medicaid reimbursement rule, 1 TAC §355.8181, Reimbursement (for birthing center services).

Background and Justification

The proposed repeal of 1 TAC §355.8181, Reimbursement (for birthing center services), is a result of a federal mandate from the Centers for Medicare and Medicaid Services (CMS), which instructed Texas to discontinue Medicaid payments to birthing centers for services rendered in the facility by a certified nurse midwife (CNM) or physician. This proposed repeal of the reimbursement rule for birthing center services will bring HHSC into compliance with the federal mandate from CMS.

Section-by-Section Summary

The proposed repeal of §355.8181 will discontinue Medicaid payments to birthing centers for services provided in the facility by a CNM or physician.

Fiscal Note

Thomas Suehs, Deputy Executive Commissioner for HHSC, has determined that during the first five-year period the repeal is in effect there will be no significant fiscal impact as a result of the repeal of this rule. Even though the payments to birthing centers will be discontinued, the payments that were formerly paid to birthing centers will instead be paid directly to the CNM, or physician, who, as a result of this rule, will then reimburse the birthing center for the use of the facility. Therefore, the elimination of payments to birthing centers will be offset by the increase in rates to CNMs and physicians for services in a birthing center. This change in payment methodology is mandated by CMS.

Small and Micro-business Impact Analysis

The proposed rule repeal will not result in any significant fiscal implications for small businesses, local health and human service agencies or local governments. Those that provide birthing center services will no longer receive direct reimbursement from Medicaid and will instead bill the CNM for reimbursement for Medicaid-covered births. Billing the midwife for services could increase administrative costs. A CNM may incur an administrative cost when complying with this rule because the midwife will have to reimburse the birthing center for its Medicaid services. This change is required by federal regulation. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each of the first five years the repeal is in effect, the expected public benefit of the repeal of this rule is that HHSC will be in compliance with the CMS directive to discontinue direct payments to birthing centers.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care Services, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The repeal is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The proposed repeal affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8181. Reimbursement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902483
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER M. MISCELLANEOUS MEDICAID PROGRAMS
DIVISION 2. MEDICAID WAIVER PROGRAM FOR PEOPLE WITH DEAF-BLINDNESS AND MULTIPLE DISABILITIES

1 TAC §355.9022

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.9022, Reimbursement Methodology for Community-Based Services Provided to People Who Are Deaf-Blind with Multiple Disabilities, under Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 355, Subchapter M, Division 2.

Background and Justification

Section 355.9022 establishes the rate methodology for the Deaf-Blind with Multiple Disabilities (DBMD) Waiver program oper-

ated by the Texas Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is repealing these rules, and is subsequently proposing rules for the DBMD rate methodology under 1 TAC, Part 15, Chapter 355, Subchapter E, Community Care for Aged and Disabled. These rules are contemporaneously proposed elsewhere in this issue of the *Texas Register.*

This proposed repeal and the subsequent proposed adoption of these rules in a different chapter will result in the DBMD reimbursement methodology rules being moved from Subchapter M, Miscellaneous Medicaid Programs, to Subchapter E, Community Care for Aged and Disabled, a subchapter which contains similar rules. This movement of the rules will make them more accessible to the public.

Section-by-Section Summary

This section is repealed.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period after the rule is repealed and subsequently adopted in a different subchapter, there will be no fiscal impact to state government. There are no fiscal implications for local governments as a result the repeal of this rule.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of the repeal of this rule. The repeal, and the subsequent adoption of this rule in a different subchapter, do not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with the repeal of this rule. The repeal will not affect local employment.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years after the rule is repealed and subsequently adopted in a different subchapter, the expected public benefit is that the rules will be located in a subchapter with similar rules, and will thus be more accessible to the public.

Takings Impact Assessment

HHSC has determined that this repeal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that the repeal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this repeal may be directed to Sarah Hambrick in the HHSC Rate Analysis Department by telephone at (512) 491-1431. Written comments on the repeal may be submitted to Ms. Hambrick by facsimile at (512) 491-1998, by e-mail to sarah.hambrick@hhsc.state.tx.us, or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The repeal is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC to with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The repeal affects Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.9022. Reimbursement Methodology for Community-Based Services Provided to People Who Are Deaf-Blind with Multiple Disabilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902563
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.203

The Texas Department of Agriculture (the department) proposes amendments to §1.203, concerning the Texas-Israel Exchange (TIE) Advisory Committee. The amendments are proposed to make the section conform to new requirements established under Senate Bill (SB) 1016, 81st Legislative Session, 2009, that changed the existing TIE Board to an Advisory Committee, and to add a reporting provision, as required by Texas Government Code, Chapter 2110.

Brian Murray, Assistant Commissioner for External Relations, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of the administration and enforcement of the amended section.

Mr. Murray also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administration and enforcement of the

amendments will be the updating of rules to conform to statutory requirements. There will be no adverse fiscal impact on microbusinesses, or small businesses or individuals required to comply with the amended section.

Written comments on the proposal may be submitted to Brian Murray, Assistant Commissioner for External Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code (the Code), §45.004, which provides the department with the authority to adopt rules for administration of its duties under Chapter 45, relating to the Texas-Israel Exchange Research Program, as amended by SB 1016; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect; and Texas Government Code, §2110, which provides that a state agency that establishes an advisory committee shall by rule state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The proposal affects the Texas Agriculture Code, Chapter 45.

§1.203. Texas-Israel Exchange Fund (TIE) Advisory Committee [~~Board~~].

(a) Purpose. The Texas-Israel Exchange Fund (TIE) Advisory Committee [~~Board~~] is created by Texas Agriculture Code Annotated, §45.009 [~~§45.006~~].

(b) Duties. The TIE Advisory Committee, as established by the department, may provide guidance and direction on activities authorized under Texas Agriculture Code, Chapter 45, and the expenditure of money to include [~~Board serves as a liaison to the corresponding Israeli board to encourage and support a program of mutual cooperation for solving problems shared by both regions relating to food and fiber production. In fulfilling its purposes, the TIE Board performs the following functions~~]:

(1) advising the department on [~~advises or ratifies~~] the selection of categories of grants to be administered by the department and advising [~~advises~~] the department on matters involving mutual assistance, trade, and business development between Texas and Israel;

(2) advising on the awarding of [~~advises or ratifies department~~] grants, in cooperation with the corresponding Israeli board, to provide funding for projects to mutually benefit both regions; and

(3) consulting [~~consults~~] with the corresponding Israeli board to efficiently address matters of mutual importance while avoiding duplication of effort.[~~; and~~]

[~~(4) directly communicates with both the department and the corresponding Israeli body as follows:~~]

[~~(A) cooperating closely with the corresponding Israeli body, reports to the department at regularly scheduled meetings, at least twice annually, on recommended priorities; and~~]

[~~(B) makes an annual accounting of all money received, awarded, and expended during the year to the legislative committees responsible for agricultural issues.~~]

(c) Duration. The Advisory Committee shall remain in existence as long as deemed necessary by the Commissioner. [~~Pursuant to the Texas Agriculture Code, 45.006(i), the TIE Board is abolished on September 1, 2007, unless continued under the Texas Sunset Act, Texas Government Code, Chapter 325.~~]

(d) Reporting. Reporting takes place through meetings held by the Committee. Through these meetings, the Commissioner and/or department staff discuss matters related to the committee's business and the Committee provides oral feedback and direction. The Committee is staffed by the department. Department staff prepares and maintains the minutes of each advisory committee meeting. Staff maintains a record of actions taken and distributes copies of approved minutes and other Committee documents to Committee members and the Commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902546
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER E. ADVISORY COMMITTEES

The Texas Department of Agriculture (the department) proposes the repeal of §1.207 and amendments to §1.209, concerning the Wine Marketing Assistance Program Advisory Committee and the Wine Industry Development and Marketing Advisory Committee. The repeal and amendments are proposed to conform the sections with changes made by Senate Bill 1016 (SB1016), 81st Legislature, 2009, which eliminates the existing Wine Marketing Assistance Program Advisory Committee and the existing Wine Industry Development Advisory Committee and creates a new Wine Industry Development and Marketing Advisory Committee. The repeal of §1.207 eliminates the Wine Marketing Assistance Program Advisory Committee. The amendments to §1.209 provide the name, composition, and terms of members of the new Wine Industry Development and Marketing Advisory Committee.

Brian Murray, Assistant Commissioner for External Relations, has determined that for the first five years the proposed repeal and amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended section.

Mr. Murray also has determined that for each year of the first five years the repeal and amended section are in effect the public benefit anticipated as a result of enforcing the proposed amended section will be to provide interested members of the public with accurate information regarding the department's wine advisory committees. For the first five-year period the repeal and proposed amended section are in effect, there will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the section, as proposed.

Comments on the repeal and proposed amendments may be submitted to Brian Murray, Assistant Commissioner for External Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

4 TAC §1.207

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of §1.207 is proposed under the Texas Government Code, §2110.005, which requires that an agency that establishes an advisory committee adopt rules to state the purpose and tasks of the committee and manner in which the committee shall report to the agency; §2110.008, which authorizes an agency establishing an advisory committee to designate the duration of a committee; the Texas Agriculture Code (the Code), §50B.002, as amended by SB 1016, which authorizes the Commissioner of Agriculture to appoint a Wine Industry Development and Marketing Advisory Committee; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Code affected by the proposal is the Texas Government Code, Chapter 2110 and the Texas Agriculture Code, Chapter 50B.

§1.207. Wine Marketing Assistance Program Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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4 TAC §1.209

The amendments to §1.209 are proposed under the Texas Government Code, §2110.005, which requires that an agency that establishes an advisory committee adopt rules to state the purpose and tasks of the committee and manner in which the committee shall report to the agency; §2110.008, which authorizes an agency establishing an advisory committee to designate the duration of a committee; the Texas Agriculture Code (the Code), §50B.002, as amended by SB 1016, which authorizes the Commissioner of Agriculture to appoint a Wine Industry Development and Marketing Advisory Committee; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Code affected by the proposal is the Texas Government Code, Chapter 2110 and the Texas Agriculture Code, Chapter 50B.

§1.209. Wine Industry Development and Marketing Advisory Committee.

(a) Purpose. The Wine Industry Development and Marketing Advisory Committee (Committee) is appointed by the Commissioner of Agriculture (Commissioner) pursuant to the Texas Agriculture Code, §50B.002 and is established within the Texas Department of Agriculture (the department) to assist the Commissioner in developing a long-term vision and marketable identity for the wine industry in the state, and assist the Commissioner in establishing and implementing the Texas Wine Marketing Assistance Program under Texas Alcoholic Beverage Code §110.002.

(b) Composition; Duties. The Committee is composed of representatives of the Texas wine industry including grape growers, wineries, wholesalers, package stores, retailers, researchers, [~~winery owners, wine grape growers, persons representing~~] consumers [~~of wine~~], the department, and the Texas Alcoholic Beverage Commission [~~ex-officio members representing institutions of higher education that have established programs in enology and viticulture, and the department~~]. The Committee shall assist the Commissioner in developing a vision and identity for the Texas wine industry by studying future industry development, funding, research, educational programming, risk management and marketing issues related to wine. In addition, the Committee may advise the Commissioner on the implementation of the Wine Industry Development Fund grant program and the Wine Marketing Assistance Program.

(c) Duration. The Committee members shall serve a term of two years and the committee shall remain in existence under the same sunset review date as the department [~~as long as deemed necessary by the Commissioner~~].

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200902569
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER C. PROHIBITION OF PLANTING OF COTTON

4 TAC §3.51

The Texas Department of Agriculture (the department) proposes amendments to Chapter 3, Subchapter C, §3.51, concerning prohibition of planting of cotton. The amendments are proposed to make the definitions in Subchapter C consistent with those found in 4 TAC Chapter 20, relating to cotton pest control, which are being amended to implement changes made to Texas Agriculture Code, Chapter 74, by the enactment of House Bill 1580 (HB 1580) by the 81st Texas Legislature, 2009. The amendments modify the definitions of "Commercial cotton" and "Non-commercial cotton".

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Kostroun also has determined that for each year of the first five years the proposed amendments are in effect the pub-

lic benefit anticipated as a result of administering and enforcing the amended section will be having updated and consistent rules relating to the department's cotton stalk destruction program. There will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the amended section, as proposed.

Comments on the proposal may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment to §3.51 is proposed under the Texas Agriculture Code, §74.120 which authorizes the department to adopt reasonable rules necessary to carry out the purposes of Chapter 74, Subchapter D, relating to the boll weevil eradication foundation program.

The Texas Agriculture Code, Chapter 74, is affected by the proposal.

§3.51. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Commercial cotton--Cotton grown for sale or barter. [~~Cotton grown for the purpose of processing and sale for economic profit.~~]

(3) - (5) (No change.)

(6) Noncommercial cotton--Any cotton that is not commercial cotton. [~~Cotton grown for other than processing or sale for economic profit, including cotton grown for ornamental or research purposes.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 463-4075

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CHAPTER 13. GRAIN WAREHOUSE

4 TAC §13.7

The Texas Department of Agriculture (the department) proposes amendments to §13.7, concerning grain warehouse program fees. The amendments are proposed to ensure cost recovery in the area of grain warehouse inspections, as required by the 2010-2011 Appropriations Act, Senate Bill 1, Article VI, Page VI-8, Rider 20 (Rider 20). Rider 20 provides the authority for the department to add a full-time grain warehouse audit specialist to its staff, contingent upon raising the cost of fees in an amount sufficient to cover the cost of the new specialist. The proposed amendments to §13.7 increase fees for an annual inspection and requested inspections from $12.00 to $14.40 per 10,000 bushels or a fraction of 10,000 bushels of the licensed storage capacity, or $100.00, whichever is greater.

Rick Garza, Coordinator for Commodity Programs, has determined that for the first five years the amended section is in effect, there will be fiscal implications for state government due to the increase in inspection fees collected. There will be an approximate increase in state revenue of $60,000 per year, as a result of enforcing or administering the amended section. There will be no anticipated cost to local government as a result of enforcing or administering the amended section.

Mr. Garza has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing or administering the amended section will be that costs of implementing the grain warehouse program will be recovered, allowing for the addition of needed staff to better protect producers and carry out the department's duties under the grain warehouse law and regulations. The anticipated economic cost to individuals, micro businesses and small businesses affected by the proposed amended sections will be an increase in the inspection fee by $2.40 for each 10,000 bushels or a fraction of 10,000 bushels of the licensed storage capacity.

Comments on the proposal may be submitted to Rick Garza, Coordinator for Grain Warehouse Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Agriculture Code (the Code), §14.015, which provides the department with the authority to adopt rules necessary for the administration of requirements and procedures for the operation of a grain warehouse; the Code §14.023, which provides the department with the authority to provide by rule for an annual license fee for a grain warehouse license; Senate Bill 1, Appropriations Act, 81st Legislature, which requires the department to raise the cost of fees in an amount sufficient to cover the cost of new staff to implement the grain warehouse program; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Texas Agriculture Code, Chapter 14 is affected by this proposal.

§13.7. Fees.

(a) - (c) (No change.)

(d) Inspection fees. The fee for an annual inspection is $14.40 [~~$12.00~~] for each 10,000 bushels or a fraction of 10,000 bushels of the licensed storage capacity, or $100, whichever is greater.

(e) Requested inspections.

(1) The fee for an inspection to increase or decrease licensed storage capacity including temporary storage is $14.40 [~~$12.00~~] for each 10,000 bushels or a fraction of 10,000 bushels of the increase or decrease in storage capacity, or $100.00, whichever is greater.

(2) The fee for a partial inspection is $14.40 [~~$12.00~~] for each 10,000 bushels or a fraction of 10,000 bushels of the partial facility that is being inspected, or $100.00, whichever is greater.

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 19, 2009.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 463-4075

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CHAPTER 14. PERISHABLE COMMODITIES HANDLING AND MARKETING PROGRAM

The Texas Department of Agriculture (the department) proposes amendments to §§14.1 - 14.4, 14.10, 14.13, 14.14, and 14.21, related to the Perishable Commodities Handling and Marketing Program. The amendments to §§14.1, 14.2 and 14.4 are made to clarify the definition of "citrus fruit", to clarify requirements for showing a proof of ownership, and to formalize current practice in initiating proceedings to cancel a license for failure to reimburse the Produce Recovery Fund (Fund). The amendments to §§14.3, 14.10, 14.13 and 14.14 are proposed due to the passage of Senate Bill 1016 (SB 1016) during the 81st Legislative Session, which amended Texas Agriculture Code, Chapters 101 and 103, the statutory authority for the Handling and Marketing of Perishable Commodities Program, to eliminate the cash dealer license category, authorize the filing of claims against persons who are required to be licensed, increase the time for filing of claims to two years after the date of the violation, and change the amounts which may be paid from the Fund and method of reimbursement to the Fund.

The proposed amendments to §14.1 eliminate the definition for cash dealer and clarify the definition for citrus by specifying associated genera and including lemons, limes, and tangerines. Proposed amendments to §14.2 eliminate the requirements for citrus proof of ownership for a producer and their employees when citrus fruit is being hauled from the farm or grove to market or the place of first processing. Proposed amendments to §14.3 delete a fee for a cash dealer license since a cash dealer license will no longer be required. Proposed amendments to §14.4 specify the timing in which the department may initiate proceedings to cancel a license for a person who fails to reimburse and or fails to agree in writing to reimburse the Produce Recovery Fund. Proposed amendments to §14.10 amend eligibility requirements for filing a claim against the Produce Recovery Fund by allowing claims to be filed against a person required to be licensed (in addition to those who are licensed) and establishing a two year period of eligibility, from the date a payment was due, for filing a claim. Proposed amendments to §14.13 establish the amount of a claim eligible for payment from the fund. The eligible amount for claims are proposed for violations occurring prior to September 1, 2009 as well as those claims filed for violations on or after September 1, 2009. Proposed amendments to §14.14 update the requirements for reimbursement to the Produce Recovery Fund by a licensee or a person required to be licensed. Proposed changes to §14.21 clarify that the department may collect fees from a person required to be licensed.

Rick Garza, Coordinator for Commodity Programs, has determined that, for the first five-year period the proposed amendments are in effect, there will be a fiscal impact for state government of an estimated $18,360 annually in state revenue as a result of eliminating the cash dealer licensing fees. Some of this amount will be recovered by the elimination of the cost for processing cash dealer licenses and cost of enforcement of the cash dealer provisions of the current law. There will be no fiscal implications for local government. The fiscal implications for state government as a result of allowing claims to the Produce Recovery Fund by a person required to be licensed cannot be estimated at this time since the department does not have historical data on how many potential claims may have existed against an unlicensed person or person required to be licensed.

Mr. Garza also has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of the administration and enforcement of the amendments will be the efficient use of department resources and perishable commodity regulations that provide greater protection and assistance to producers that do not receive payment for produce sold to a licensee or persons required to be licensed. There will be no adverse fiscal impact on individuals, microbusinesses, or small businesses required to comply with the proposed changes, except that businesses subject to the cash dealer license under existing law and regulations will no longer be required to purchase a $30 cash dealer license.

Written comments on the proposal may be submitted to Rick Garza, Coordinator for Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposed changes in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§14.1 - 14.4

The amendments to §§14.1, 14.2, and 14.4 are proposed under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code; the Code, §101.006, which provides that the department shall charge a registration fee for a cash dealer as provided by department rule, as repealed by SB 1016, the Code, §103.012, which provides the department with the authority to adopt rules related to payment of claims from the Produce Recovery Fund; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The code affected by the proposal is the Texas Agriculture Code, Chapters 101 and 103.

§14.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code, Chapters 101, and 103 and Chapter 1, Subchapter A of this title (relating to the General Rules of Practice), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

[~~(2) Cash Dealer--A person who buys Texas grown perishable commodities in United States currency before or at the time of delivery or taking possession.~~]

(2) [~~(3)~~] Chairman--The chairman of the Produce Recovery Fund Board.

(3) [~~(4)~~] Citrus Fruit--Any fruit belonging to the genus Citrus, Poncitrus, Microcitrus, Eremocitrus or Fortunella, including, grapefruit, [~~Grapefruit and~~] oranges, lemons, limes, and tangerines.

(4) [~~(5)~~] Claim--A sworn complaint accompanied by the prescribed fee alleging a loss or damages occurred as a result of a violation of the terms or conditions of a contract involving the sale of perishable commodities grown in Texas.

(5) [~~(6)~~] Licensee--A person who holds a license issued under the Texas Agriculture Code, Chapter 101.

(6) [~~(7)~~] Open Meetings Act--Texas Open Meetings Act, Texas Government Code, Chapter 551.

(7) [~~(8)~~] Perishable Commodity--Fresh produce grown in Texas and generally considered a perishable vegetable or fruit.

§14.2. Citrus Proof of Ownership.

A licensee or a packer, processor, [~~or~~] warehouseman or transporter may not receive or handle citrus fruit without requiring the person from whom the citrus fruit is purchased or received to furnish proof of ownership on a form approved by the department; except for citrus fruit being transported from the farm or grove to market or the place of first processing by the producer of the citrus fruit operating the producer's vehicle or by an employee of the producer operating a vehicle owned by the producer.

§14.3. Fees.

(a) License/registration/identification card fees.

(1) (No change.)

[~~(2) The registration fee for a cash dealer is $30.00.~~]

(2) [~~(3)~~] The fee for each identification card is $10.00.

(b) Produce Recovery Fund fee. In addition to a license fee, an annual fee of $250 shall be paid at the time of making the license application. [~~This fee does not apply to cash dealers.~~]

(c) - (d) (No change.)

§14.4. Cancellation of License.

If an award and payment is made from the Fund and the licensee, or person required to be licensed, fails to reimburse and/or fails to agree in writing to reimburse the Fund and/or the complaining party to the case in accordance with the provisions of this chapter, the department shall initiate proceedings, after 90 days of failure to reimburse and/or failure to agree in writing to reimburse the Produce Recovery Fund, to cancel the licensee's license in accordance with the Texas Agriculture Code, §103.009. Such proceedings shall be conducted in accordance with the Texas Agriculture Code, §12.032, the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's rules of procedure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER B. PRODUCE RECOVERY FUND CLAIMS

4 TAC §§14.10, 14.13, 14.14

The amendments to §§14.10, 14.13, and 14.14 are proposed under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code; the Code, §103.012, which provides the department with the authority to adopt rules related to payment of claims from the Produce Recovery Fund; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The code affected by the proposal is the Texas Agriculture Code, Chapters 101 and 103.

§14.10. Claims against the Fund.

(a) What claims can be filed. Only claims against a licensee or a person required to be licensed for loss or damages due to a violation of the terms or conditions of a contract for the sale of perishable commodities grown in Texas may be filed. The following claims may not be accepted:

(1) Claims [~~against a cash dealer, or a company not licensed under Chapter 101 and claims~~] for perishable commodities grown out-of-state.

(2) (No change.)

(b) Who may file. A person who suffers a loss or damages due to the violation of the terms or conditions of a contract by a licensee or a person required to be licensed may file a claim against the Fund.

(c) (No change.)

(d) Statute of Limitations. A claim shall be barred if it is filed later than one year from the date the violation of the terms or conditions of a contract occurred. This limitation applies to claims that are based on violations that occurred prior to September 1, 2009. Claims based on violations that occurred on or after September 1, 2009 shall be barred if it is filed later than two years from the date the payment was due. [~~However, this limitation does not apply to claims that are based on violations that occurred prior to September 1, 1995.~~]

(e) (No change.)

§14.13. Payment of Claims from the Fund.

(a) The following payments of claims shall apply for a claim based on a violation occurring prior to September 1, 2009.

(1) [~~(a)~~] Claims of $2000 or less may be paid in full.

(2) [~~(b)~~] Claims of more than $2000 may be paid in the following manner:

(A) [~~(1)~~] If the claim was filed on or after September 1, 1999 but prior to September 1, 2009, the first $2000 plus no more than 70% of the amount in excess of $2000, may be paid.

(B) [~~(2)~~] If the claim was filed prior to September 1, 1999, the first $1000 plus no more than 60% of the amount in excess of $1000, may be paid.

(3) [~~(c)~~] Claims arising from Same Contract. Total payment for claims arising from the same contract shall not exceed $35,000.

(4) [~~(d)~~] Claims Against a Single Licensee. Total payment for claims against a single licensee shall not exceed $85,000 in any one calendar year. Claims shall be paid in the order that a final determination is made by the department or the Board. In cases when a claim cannot be paid in full due to the restrictions of this paragraph, the claimant shall be given the option of accepting immediate payment

of a lesser amount or accepting full payment from the Fund during the next calendar year.

(b) The following payments of claims shall apply for a claim based on a violation occurring on or after September 1, 2009.

(1) Claims of $50,000 or less may be paid in full.

(2) Claims Arising from Same Contract. Total payment for claims arising from the same contract shall not exceed $50,000.

(3) Claims Against a Single Licensee or a person required to be licensed. Total payment for claims against a single licensee or a person required to be licensed shall not exceed $85,000 in any one calendar year.

(4) Claims against a person who is not licensed. Payment for claims against a person who is not licensed at the time the claim was filed shall not exceed 80% of the total claim.

(5) Claims shall be paid in accordance with the order that a final determination is made by the department or the Board. In cases when a claim cannot be paid in full due to the restrictions of this subsection, the claimant shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the Fund during the next calendar year.

§14.14. Reimbursement to the Fund.

(a) If the department pays a claim against a licensee, or a person required to be licensed, from the Fund:

(1) Upon issuance of a final determination from the department or the Board, the licensee shall reimburse the total amount paid by the Fundor agree in writing to reimburse the Fund the total amount paid by the Fund. If a person is not licensed on the date the transaction forming the basis of the claim occurred but is required to be licensed, the person shall pay the Fund one and one-half times the amount of the claim paid by the Fund, upon issuance of a final determination from the department or the Board. Payment to the Fund is due in full within 30 days of the date of the final agency determination. If the licensee, or a person required to be licensed, cannot pay the full amount to the Fund at that time, the department may allow the licensee, or a person required to be licensed, to pay the amount owed to the Fund on an amortization schedule set out in paragraph (3) of this subsection plus an annual interest rate of 8.0%.

(2) After fully reimbursing the Fund for payments made to the claimant, the licensee, or a person required to be licensed, shall immediately pay or agree to pay the claimant any remaining amount due that party (balance not received from the Fund). If the licensee or, or a person required to be licensed, cannot pay the full amount to the claimant at that time, the department may allow the licensee, or a person required to be licensed, to pay the amount owed to the claimant on an amortization schedule as set out in paragraph (3) of this subsection plus an annual interest rate of 8.0%, after the Fund is fully reimbursed.

(3) (No change.)

(b) (No change.)

(c) If a licensee, or a person required to be licensed, owes money to the Fund at the time the licensee, or a person required to be licensed, makes a claim against the Fund, the department shall offset the amount owed to the Fund from the amount determined to be payable from the Fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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SUBCHAPTER C. PRODUCE RECOVERY FUND BOARD

4 TAC §14.21

The amendment to §14.21 is proposed under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code; the Code, §103.012, which provides the department with the authority to adopt rules related to payment of claims from the Produce Recovery Fund; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The code affected by the proposal is the Texas Agriculture Code, Chapters 101 and 103.

§14.21. Duties of the Board and the Department.

(a) (No change.)

(b) The department shall:

(1) administer the Fund, including the collection of fees from licensees, or a person required to be licensed, which are to be deposited into the Fund in accordance with the Texas Agriculture Code, Chapter 103;

(2) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 16. AQUACULTURE

4 TAC §16.4

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Agriculture (the department) proposes to repeal §16.4, concerning the Texas shrimp marketing assistance program surcharge. The repeal is proposed to implement changes made to Texas Agriculture Code, Chapter 47 by House Bill 4593 (HB 4593), 81st Legislative Session, 2009, which eliminated the shrimp marketing assistance program surcharge for shrimp raised in aquaculture facilities, and provides that the

shrimp marketing assistance program apply only to wild-caught shrimp commercially harvested from coastal waters by a shrimp boat licensed by the Texas Parks and Wildlife Department.

Gene Richards, assistant commissioner for marketing programs, has determined that, for the first five-year period the repeal is in effect, there will be fiscal implications for state government as a result of the elimination of the shrimp surcharge fee. There will be an estimated decrease in state revenue of less than $3,000 per year, based on a four-year average of fees collected by the department. There will be no fiscal implications for local government.

Mr. Richards also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administration and enforcement of the repeal will be the elimination of unnecessary rules. There will be no adverse fiscal impact on microbusinesses, or small businesses required to comply with the repeal. Any existing shrimp surcharge fee paid by those entities and individuals will no longer be required.

Written comments on the proposal may be submitted to Gene Richards, Assistant Commissioner for Marketing Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Agriculture Code, §134.014, as amended by House Bill 4593, which eliminates the shrimp marketing surcharge fee and the authority for the department to set such a fee by rule; and §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The proposal affects the Texas Agriculture Code, Chapter 134.

§16.4. Texas Shrimp Marketing Assistance Program Surcharge.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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CHAPTER 17. MARKETING AND PROMOTION
SUBCHAPTER E. TEXAS-ISRAEL EXCHANGE RESEARCH PROGRAM

4 TAC §§17.100, 17.102, 17.104

The Texas Department of Agriculture (the department) proposes amendments to §§17.100, 17.102 and 17.104, concerning the Texas-Israel Exchange (TIE) Research Program. The amendments are proposed to make these sections conform to new requirements established under Senate Bill 1016 (SB 1016), 81st Legislative Session, 2009, that changed the existing TIE Board to an Advisory Committee.

Brian Murray, Assistant Commissioner for External Relations, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of the administration and enforcement of the amended sections.

Mr. Murray also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of implementation of the amendments will be the updating of rules to conform to statutory requirements. There will be no adverse fiscal impact on microbusinesses, or small businesses or individuals required to comply with the amended sections.

Written comments on the proposal may be submitted to Brian Murray, Assistant Commissioner for External Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code (the Code), §45.004, which provides the department with the authority to adopt rules for administration of its duties under Chapter 45, as amended by SB 1016; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The proposal affects the Texas Agriculture Code, Chapter 45.

§17.100. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly states otherwise.

(1) Advisory Committee [~~Board~~]--The Texas-Israel Exchange Research Program (TIE) Advisory Committee [~~Fund board~~], as established by the Texas Agriculture Code, Chapter 45.

(2) - (3) (No change.)

(4) TIE--The Texas-Israel Exchange Research Program [~~Fund~~], as set forth in the Texas Agriculture Code, Chapter 45.

§17.102. Administration.
The TIE program will be administered by a coordinator appointed by the Commissioner, who shall work in cooperation with a counterpart designated by Israel to support projects of mutual benefit to Texas and Israel. The TIE Advisory Committee may provide guidance and direction on activities authorized under Texas Agriculture Code, Chapter 45, and the expenditure of money to include: [~~The Board will ratify the choice of projects to receive TIE funding, after consultation with corresponding designees of the Israeli government. An equal amount of monies shall be contributed by Texas and Israel for each year the program is in operation.~~]

(1) advising the department on the selection of categories of grants to be administered by the department and advising the department on matters involving mutual assistance, trade, and business development between Texas and Israel;

(2) advising on the awarding of grants, in cooperation with the corresponding Israeli board, to provide funding for projects to mutually benefit both regions; and

(3) consulting with the corresponding Israeli board to efficiently address matters of mutual importance while avoiding duplication of effort.

§17.104. Application Procedure.

(a) The department shall issue a [an annual] request for proposals, to be published in the Texas Register during each grant cycle [fiscal year] for which Texas and Israel have dedicated an equal amount of funds for implementing the TIE program.

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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SUBCHAPTER F. TEXAS WINE MARKETING ASSISTANCE PROGRAM

4 TAC §17.200, §17.201

The Texas Department of Agriculture (the department) proposes amendments to Chapter 17, Subchapter F, §17.200 and §17.201, concerning the Texas Wine Marketing Assistance Program. The amendments are proposed to modify §17.200 and §17.201 to conform with changes made by Senate Bill 1016 (SB1016), 81st Legislature, 2009 which eliminates the existing Wine Marketing Assistance Program Advisory Committee and the existing Wine Industry Development Advisory Committee and creates a new Wine Industry Development and Marketing Advisory Committee. The amendments change the name of the committee, and updates the committee responsibilities.

Gene Richards, Assistant Commissioner for Marketing and Promotion, has determined that for the first five years the proposed amended sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended section.

Mr. Richards also has determined that for each year of the first five years the proposed amended sections are in effect the public benefit anticipated as a result of enforcing the proposed amended sections will be to provide interested members of the public with accurate information regarding the department's wine advisory committee. For the first five-year period the proposed amended section is in effect, there will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the section, as proposed.

Comments on the proposed amendments may be submitted to Gene Richards, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §17.200 and §17.201 are proposed under the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules to administer its powers and duties under the Code; §50B.002 which authorizes the Commissioner of Agriculture to appoint a Wine Industry Development and Marketing Advisory Committee; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 50B.

§17.200. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Committee--The Wine Industry Development and Marketing Advisory Committee, appointed by the Commissioner of Agriculture (Commissioner) pursuant to the Texas Agriculture Code, §50B.002.

[(1) Committee--Texas Wine Marketing Assistance Program Advisory Committee, as established by the Texas Alcoholic Beverage Code, Chapter 110.]

(2) - (6) (No change.)

§17.201. Wine Marketing Assistance Program [and Advisory Committee].

(a) (No change.)

(b) The committee's responsibilities under this subchapter are as follows.

[(1) The committee shall be composed of the following members appointed by the commissioner:]

[(A) three representatives of Texas wineries;]

[(B) one representative of Texas wine wholesalers;]

[(C) one representative of Texas package stores;]

[(D) one representative of the department; and]

[(E) one representative of the commission.]

[(2) Committee members serve without compensation or reimbursement of expenses;]

[(3) Four members of the committee constitute a quorum sufficient to conduct the meetings and business of the committee;]

(1) [(4)] The committee shall assist the commissioner in establishing and implementing the Texas Wine Marketing Assistance Program and the Wine Industry Development Fund; and

(2) [(5)] The committee may advise the department on the adoption of rules relating to the administration of the Texas Wine Marketing Assistance Program and the Wine Industry Development Fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM

4 TAC §17.400, §17.401

The Texas Department of Agriculture (the department) proposes amendments to §17.400 and §17.401, concerning the shrimp marketing assistance program and advisory committee. The amendments are proposed to implement changes made to Texas Agriculture Code, Chapter 47 by House Bill 4593 (HB 4593), 81st Legislative Session, 2009, which eliminated the shrimp marketing assistance program surcharge for shrimp raised in aquaculture facilities, and provides that the shrimp marketing assistance program apply only to wild-caught shrimp commercially harvested from coastal waters by a shrimp boat licensed by the Texas Parks and Wildlife Department. The amendments to §17.400 eliminate the definition of "Aquaculture" and modify the definition of "Texas-produced shrimp" to make it consistent with the definition in HB 4593. The amendments to §17.401 add "wild-caught shrimp" throughout the section and eliminate the member of the Texas shrimp aquaculture industry from the advisory committee.

Gene Richards, assistant commissioner for marketing programs, has determined that, for the first five-year period the amended sections are effect there will be no fiscal implications for state or local government.

Mr. Richards also has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the administration and enforcement of the amended sections will be having the rules consistent with statutory requirements. There will be no adverse fiscal impact on microbusinesses, small businesses or individuals required to comply with the amended sections.

Written comments on the proposal may be submitted to Gene Richards, Assistant Commissioner for Marketing Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code, §47.052, which provides the department with the authority to adopt rules for administration of the shrimp marketing program; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The proposal affects the Texas Agriculture Code, Chapter 47.

§17.400. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

[~~(1) Aquaculture--pertaining to the business of producing and selling cultured Texas-produced shrimp which have been raised in facilities such as a pond, tank, cage or other structure capable of holding the cultivated species in confinement wholly within or on private land or water or within permitted public land or water.~~]

(1) [~~(2)~~] Coastal waters--All the salt water of the state, including the portion of the Gulf of Mexico that is within the jurisdiction of the state.

(2) [~~(3)~~] Commissioner--The Commissioner of Agriculture, Texas Department of Agriculture.

(3) [~~(4)~~] Committee, or Advisory Committee--The Texas Shrimp Marketing Assistance Program Advisory Committee, as established by the Texas Agriculture Code, Chapter 47, Subchapter B.

(4) [~~(5)~~] Department--The Texas Department of Agriculture.

(5) [~~(6)~~] Program--The Texas shrimp marketing assistance program.

(6) [~~(7)~~] Texas-produced shrimp--Wild caught shrimp commercially harvested from coastal waters by a shrimp boat licensed by the Parks and Wildlife Department [~~and/or produced within the borders of the state~~].

§17.401. Shrimp Marketing Assistance Program and Advisory Committee.

(a) The Texas shrimp marketing assistance program is established in the department to promote and market the Texas wild-caught shrimping industry and to educate the public about [~~assist the Texas shrimp industry in promoting and marketing Texas-produced shrimp and educating the public about the Texas shrimp industry and~~] Texas-produced shrimp.

(b) The department's responsibilities under this subchapter are as follows.

(1) - (2) (No change.)

(3) The department shall promote and advertise the Texas wild-caught shrimping [~~shrimp~~] industry via the program as follows:

(A) develop and maintain a database of Texas shrimp wholesalers that sell Texas-produced shrimp;

(B) operate a toll-free telephone number to:

(i) receive inquiries from persons who wish to purchase [~~a particular type of~~] Texas-produced shrimp; and

(ii) make information about the Texas wild-caught shrimping [~~shrimp~~] industry available to the public;

(C) - (F) (No change.)

(c) The committee's responsibilities under this subchapter are as follows.

(1) The committee shall be composed of the following nine [~~10~~] members appointed by the Commissioner:

(A) - (B) (No change.)

[~~(C) one member of the Texas shrimp aquaculture industry;~~]

(C) [~~(D)~~] one retail wild-caught shrimp [~~fish~~] dealer;

(D) [~~(E)~~] one wholesale wild-caught shrimp [~~fish~~] dealer;

(E) [~~(F)~~] one person employed by an institution of higher education as a researcher or instructor specializing in the area of food science, particularly seafood;

(F) [~~(G)~~] one member of the seafood restaurant industry; and

(G) [~~(H)~~] one representative of the public.

(2) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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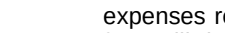

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) proposes amendments to Chapter 20, Cotton Pest Control, Subchapter A, §20.1 and §20.3, concerning definitions used in Chapter 20; Subchapter C, §20.22, concerning cotton stalk destruction requirements; and new Subchapter D, §20.30 and §20.31, concerning regulation of volunteer and other noncommercial cotton. The amendments and new sections are proposed to implement changes made to Texas Agriculture Code, Chapter 74, by the enactment of House Bill 1580 (HB 1580) by the 81st Texas Legislature, 2009.

The amendments to §20.1 add definitions for "commercial cotton", "commercial cotton field", "hostable commercial cotton fee", "hostable cotton (or hostable)", "hostable noncommercial cotton fee" and "noncommercial cotton", and clarify the definitions of "destroyed or destruction", and "non-hostable cotton". The amendments to §20.22 change the stalk destruction deadlines for Zone 7, Area 1 and Zone 8, Area 2, provide new deadlines for requests for extension, as established by HB 1580, and clarify the end date of destruction. The proposed stalk destruction deadlines are proposed based on consideration of a recommendation made by the Texas Boll Weevil Eradication Foundation and its Technical Advisory Committee. The Cotton Producer Advisory Committee for Zone 8, at a recent meeting discussed the proposed destruction deadline for Zone 8, Area 2, but did not provide a recommendation. The Cotton Producer Advisory Committee for Zone 7, at a recent meeting, opposed amending the destruction deadline for Zone 7, Area 1. New scientific analysis that indicates November 10 is the appropriate date for these areas. This analysis includes factors relevant to cotton production such as the number heat units required and the corresponding accumulation time periods relative to specific production zones, the number of days required for harvest and stalk destruction activities, and other factors. The department therefore, believes that the proposed changes for both zones are scientifically based and will accelerate boll weevil eradication. New §20.30 provides for the regulation of hostable volunteer and other noncommercial cotton in commercial cotton fields including the establishment and collection of a hostable commercial cotton fee by the department for failure to destroy hostable cotton after notice, as authorized by HB 1580. New §20.31 provides for the regulation of hostable volunteer and other noncommercial cotton in locations other than commercial cotton fields, including the establishment and collection of a hostable noncommercial cotton fee by the department for failure to destroy hostable cotton after notice, as authorized by HB 1580.

Dr. Robert Crocker, Coordinator for Pest Management, Citrus and Biotechnology Programs, has determined that for the first five-year period the amended and new sections are in effect, there will be a fiscal implication for the state, but no impact for local government as a result of enforcing or administering the amended and new sections.

The impact for state government will result from the implementation of new §20.30 and §20.31 and will include a loss to general revenue from the collection of administrative penalties for violations of the department's stalk destruction rules, an average of $23,843.64 per year, based on administrative penalties collected for the previous three years. However, a portion of the loss of revenue will be offset by an increase in available funds that may be used for the purpose of treating hostable cotton or for other expenses related to boll weevil eradication. The impact of the fees will depend on the amount of hostable commercial cotton fees collected for hostable volunteer and other noncommercial cotton present in a commercial cotton field after the cotton destruction deadline and on the amount of hostable noncommercial cotton fees collected for hostable volunteer or other hostable noncommercial cotton in a crop field, other than a commercial cotton field, that is not destroyed on or before the 14th day after notice is given. The amount of fees collected will be dependent on the number of acres of cotton planted and the weather, both of which vary in ways that cannot currently be predicted. Known factors that affect the number of acres of cotton planted are world cotton consumption (which varies dependent on world economic factors), costs of production (seed, fuel, fertilizer, irrigation), and other economic factors. Lack of soil moisture can leave large numbers of un-germinated seeds that may come up when rain arrives months later; such situations tend to produce increased amounts of noncommercial cotton in crops subsequently planted in those fields.

A hostable commercial cotton fee applies to hostable volunteer or other hostable noncommercial cotton, including regrowth, that is present in a commercial cotton field after the cotton destruction deadline or any extension of the destruction deadline. The hostable commercial cotton fee is calculated based on (the number of acre-weeks of hostable commercial cotton fee collected at $5.00 per acre for each full or partial week through the end of the fifth week after the date of the destruction deadline or any approved extension of the destruction deadline) plus (the number of acre-weeks of hostable commercial cotton fee collected at $7.50 per acre for each full or partial week through the end of the fifth week after the date of the destruction deadline or any approved extension of the destruction deadline).

In 2008, the department found a total of 15,644 acres of commercial cotton to be noncompliant with the destruction deadline; that represented 239 cases, for an average of 65.5 acres per case. The number of cases noncompliant for 1-7 days, 8-14 days, 15-21 days, 22-28 days, 29-35 days, 36-42 days and 43-49 days was 239 cases, 229 cases, 60 cases, 13 cases, 8 cases, 4 cases and 1 case, respectively. On that basis the department estimates that the hostable commercial cotton fee may generate approximately $182,132 per year, for years similar to 2008.

The amount of hostable noncommercial cotton fees to be collected for hostable volunteer or other hostable noncommercial cotton in a crop field, other than a commercial cotton field, that is not destroyed on or before the 14th day after notice is given cannot be estimated at this time, as no previous data are available on the numbers of such acres of cotton and because year-to-year weather strongly influences the amount of such cotton. However, for future situations where hostable volunteer or other hostable noncommercial cotton is found in a crop field, other than

a commercial cotton field, and it is not destroyed on or before the 14th day after notice is given, the grower or landowner shall pay a hostable noncommercial cotton fee of $5.00 per acre for each full or partial week until the cotton is destroyed. For cases where hostable volunteer or other hostable noncommercial cotton is present in less than fifty percent of the crop field, then the fee will be based on one-half of the total acreage of the crop field. However, the total fee per acre shall not exceed an amount equal to the per acre assessment for boll weevil eradication that would be applicable for commercial cotton at that location.

Dr. Crocker also has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be to protect the state's and Texas cotton producers' investment in boll weevil eradication, and to accelerate eradication of the boll weevil in Texas. There will be a fiscal impact on small or microbusinesses and individual cotton producers required to comply with new §20.30 and §20.31. The actual cost of compliance to businesses or individual cotton growers is not known because of the unpredictability of how much hostable noncommercial cotton will come up in a given year, as well as the broad range of control options for control of noncommercial cotton; such options include physical destruction of hostable noncommercial cotton plants, chemical herbicides and cultivation practices. As noted, the hostable commercial cotton fee for hostable cotton in commercial cotton fields will be calculated based on (the number of acre-weeks of hostable commercial cotton fee collected at $5.00 per acre for each full or partial week through the end of the fifth week after the date of the destruction deadline or any approved extension of the destruction deadline) plus (the number of acre-weeks of hostable commercial cotton fee collected at $7.50 per acre for each full or partial week through the end of the fifth week after the date of the destruction deadline or any approved extension of the destruction deadline). The hostable noncommercial cotton fee for hostable cotton in fields other than commercial cotton fields will be $5.00 per acre for each full or partial week until the cotton is destroyed. The total fee per acre for hostable cotton in locations other than commercial cotton fields shall not exceed the per acre assessment for boll weevil eradication that would be applicable if the location were a commercial cotton field. For cases where hostable volunteer or other hostable noncommercial cotton is present in less than fifty percent of the crop field, then the fee will be based on one-half of the total acreage of the crop field. Because the enactment of HB 1580 has declared that hostable volunteer and other noncommercial cotton is a public nuisance that threatens the eradication of the boll weevil in Texas, and that a hostable cotton fee shall be imposed on producers who do not take actions necessary to eliminate such cotton, and the agency need not consider other regulatory methods. Therefore, a regulatory flexibility analysis is not required.

Comments on the proposal may be submitted to Dr. Robert Crocker, Coordinator for Pest Management, Citrus and Biotechnology Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1, §20.3

The amendments are proposed under the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests, and amendments to Chapter 74, as established by the enactment of HB 1580 by the 81st Texas Legislature, 2009.

Texas Agriculture Code, Chapter 74, is affected by the proposal.

§20.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Commercial cotton--Cotton grown for sale or barter.

(5) Commercial cotton field--A field in which commercial cotton has been planted, or is being grown, until the planting of a new non-cotton crop in the same field.

(6) [~~(4)~~] Cotton--Any parts of cotton or wild cotton plants; this definition includes all members of the genera Gossypium and Thurberia.

(7) [~~(5)~~] Cotton lint--All forms of raw ginned cotton except linters and gin waste.

(8) [~~(6)~~] Cotton products--Seed cotton, cotton lint, linters, oil mill waste, gin waste, squares, bolls, gin trash, cotton seed, cotton seed hulls, and all other forms of unmanufactured cotton fiber.

(9) [~~(7)~~] Cotton seed--The seed of the cotton plant, separated from lint.

(10) [~~(8)~~] Destroyed, or destruction--Compliant with applicable requirements and restrictions established in Subchapters [~~Subchapter~~] C and D of this chapter; for noncommercial cotton, made non-hostable.

(11) [~~(9)~~] Destruction deadline--The date established in this chapter for destruction of cotton stalks.

(12) [~~(10)~~] Eradicated area--An area apparently free of boll weevil or, for which scientific documentation acceptable to the department has been provided that indicates that no boll weevils were captured for a period of at least one cotton growing season by weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency.

(13) [~~(11)~~] Eradication area--A defined area in which a boll weevil eradication program has been initiated.

(14) [~~(12)~~] Foundation--The Texas Boll Weevil Eradication Foundation, Inc.

(15) [~~(13)~~] Functionally eradicated area--An area meeting the trapping criteria for a suppressed area with no confirmed evidence of boll weevil reproduction occurring in the area and no oviposition in squares, and in which the movement of regulated articles presents a threat to the success of the boll weevil eradication program. The boll weevil population must be equal to or less than an average of 0.001 boll weevils per trap per week for the cotton growing season as measured by boll weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency.

(16) [~~(14)~~] Gin motes--Short fragments of unmanufactured cotton fiber removed from lint cleaners after ginning cotton.

(17) [~~(15)~~] Gin trash--All material produced during the cleaning and ginning of seed cotton, except lint, linters, cotton seed, and gin waste.

(18) [~~(16)~~] Gin waste--All forms of unmanufactured waste cotton fiber resulting from the ginning of seed cotton, including gin motes.

(19) [~~(17)~~] Hostable material--In subchapter A or B of this chapter, cotton fruiting structures such as buds, squares, flowers or bolls.

(20) Hostable commercial cotton fee--The hostable cotton fee established in Texas Agriculture Code, §74.032, as enacted by House Bill 1580, 81st Legislature, 2009, which applies to hostable cotton stalks, volunteer cotton or noncommercial cotton which remain past the stalk destruction deadline in a commercial cotton field.

(21) Hostable cotton (or hostable)--In subchapters C and D of this chapter, cotton with fruiting structures including buds, squares, flowers, uncracked bolls or unopened bolls.

(22) Hostable noncommercial cotton fee--The volunteer cotton fee established in Texas Agriculture Code, §74.119, as amended by House Bill 1580, 81st Legislature, 2009, which applies to hostable cotton stalks, volunteer cotton or noncommercial cotton in a crop field or other location that is not a commercial cotton field.

(23) [~~(18)~~] Linters--Residual unmanufactured cotton fiber separated from cottonseed after the lint has been removed.

(24) [~~(19)~~] New crop--Cotton planted on or after the earliest planting date that follows the most recent destruction deadline.

(25) [~~(20)~~] Non-hostable cotton (or non-hostable)--In subchapters C and D of this chapter [~~Refers to~~] cotton [~~in the field~~] that is free of living, normally colored (not wilted or darkened) fruiting structures including buds, squares, flowers, uncracked bolls or unopened bolls.

(26) Noncommercial cotton--Any cotton that is not commercial cotton.

(27) [~~(21)~~] Oil mill waste--Waste products, including linters, derived from the milling of cottonseed.

(28) [~~(22)~~] Plow--To dislodge or sever the roots of plants in a manner which prevents further growth. Equipment used to accomplish this could include a stalk puller, any type of plow, or similar implement.

(29) [~~(23)~~] Protection plan--A plan developed for the purpose of mitigating, with the goal of preventing, boll weevil infestation and establishment in an area. Mitigating measures may include, but are not limited to, the following:

(A) the field treatment of cotton and cotton products prior to delivery to an area or a gin by an approved insecticide;

(B) requirements for moving, handling, storage and treatment or use of approved insecticide applications to regulated articles; and

(C) monitoring of boll weevils at a specified site(s) as approved by the department.

(30) [~~(24)~~] Regrowth cotton, or regrowth--Vegetative and/or reproductive growth produced on a cotton plant following its destruction or partial destruction.

(31) [~~(25)~~] Restricted Area--An area designated as suppressed, functionally eradicated, or eradicated of boll weevils, as those terms are defined in this section.

(32) [~~(26)~~] Seed cotton--All forms of un-ginned cotton from which the seed has not been separated.

(33) [~~(27)~~] Stalk puller--An implement which dislodges the roots of cotton plants by pulling up the stalks.

(34) [~~(28)~~] Suppressed area--An area in which some boll weevil reproduction may be present in the area or a portion thereof, and in which the movement of regulated articles presents a threat to the success of the boll weevil eradication program The boll weevil population must be equal to or less than 0.025 boll weevils per trap per week for the cotton-growing season as measured by boll weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency.

(35) [~~(29)~~] Trap--Type [~~type~~] of adult boll weevil pheromone trap approved by the Texas Boll Weevil Eradication Foundation.

(36) [~~(30)~~] Treatment--The act of eliminating possible cotton pest infestation(s) by means of cleaning, spraying or fumigation to eliminate the infestation.

(37) [~~(31)~~] Volunteer cotton--For purposes of this chapter, a cotton plant or plants that were not deliberately planted.

§20.3. Violations and Enforcement Actions.

(a) Violations. In addition to any other violations that may arise under requirements of the Texas Agriculture Code, Chapter 74, or regulations adopted pursuant to the Texas Agriculture Code, Chapter 71 or Chapter 74:

(1) Failure to comply with cotton stalk destruction requirements outlined in Subchapter C of this chapter (relating to Stalk Destruction Program) or Subchapter D of this chapter (relating to Regulation of Volunteer and Other Noncommercial Cotton; Hostable Cotton Fee) constitutes a violation.

(2) Cotton that is allowed to develop fruiting structures after the destruction deadline constitutes a violation, if the producer or responsible party fails to submit a required hostable commercial cotton fee or a hostable noncommercial cotton fee.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902570
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 463-4075

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SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The amendments are proposed under Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and the Code; and §74.0031 and §74.032 as added to Chapter

74 by the enactment of HB 1580, by the 81st Texas Legislature, 2009, and which authorizes the department to set a cotton stalk destruction deadline for each pest management zone with consideration given to the recommendations of the Texas Boll Weevil Eradication Foundation and the applicable pest management advisory committee and set deadlines for submission of requests for extension of a stalk destruction deadline.

Texas Agriculture Code, Chapter 74, is affected by the proposal.

§20.22. Stalk Destruction Requirements.

(a) Deadline and methods. From the destruction deadline until the end date for destruction requirements (see graphic for this subsection), all cotton plants in a Pest Management Zone shall be nonhostable. Enforcement of destruction requirements begins on the day immediately following the destruction deadline date. Additional requirements for stalk destruction are as follows:

(1) Zone 9--All cotton plants shall be shredded.

(2) Zone 10--All cotton plants shall be shredded; also, the field shall be:

(A) Plowed, with soil being tilled to a depth of six or more inches; or

(B) Flood irrigated, following shredding of the plants, with sufficient irrigation applied to wet all soil. When flood irrigation is elected:

(i) In advance of the irrigation date, the department shall be notified in writing of intent to flood irrigate (specifying the field's location, FSA Farm Number, FSA Tract Number, FSA Field Number, a contact person and a contact phone number).

(ii) A copy of irrigation records shall be presented for inspection during normal working hours, within 5 working days, if so requested in writing by the department.
Figure: 4 TAC §20.22(a)(2)(B)(ii)

(b) Deadline extensions.

(1) - (5) (No change.)

(6) All requests for extensions must be received by the department no later than 10 business days [~~shall be postmarked (if mailed) or automatically date stamped (if electronically transmitted) on or~~] prior to the cotton destruction deadline. Late submission of an extension request may result in its denial. [~~However, if a field is in compliance with destruction requirements on the deadline, but later is in violation due to regrowth or volunteer cotton with fruiting structures as a result of extended periods of wet weather that does not allow for mechanical destruction, an extension request may be submitted after the deadline. Once a field has been declared a public nuisance by the department, no extension requests will be granted for that field until after the field has become compliant.~~]

(c) - (d) (No change.)

(e) At the end date of destruction requirements listed in the table in subsection (a) of this section, the requirement to destroy original growth, regrowth, or volunteer cotton from the previous crop year shall end for original growth, regrowth, or volunteer cotton that occurs in a commercial cotton field. Violations arising in a zone prior to the end date for destruction requirements will be pursued, but penalties shall cease to accrue on the end date for destruction requirements.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER D. REGULATION OF VOLUNTEER AND OTHER NONCOMMERCIAL COTTON; HOSTABLE COTTON FEE

4 TAC §20.30, §20.31

The new sections are proposed under Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and the Texas Agriculture Code, §74.032, as added by HB 1580, which provides the department with the authority to establish and collect a hostable cotton fee on hostable volunteer or other noncommercial cotton which remains past the stalk destruction deadline set for the applicable pest management zone, and to adopt rules to implement §74.032; and §74.119, as amended by HB 1580, which provides the department with the authority to adopt rules providing for the regulation and control of volunteer and other noncommercial cotton in pest management zones, including the establishment of a volunteer cotton fee to be paid to the department on hostable or volunteer cotton which has not been destroyed after notice by the department.

Texas Agriculture Code, Chapter 74, is affected by the proposal.

§20.30. Hostable Volunteer and Other Noncommercial Cotton in Commercial Cotton Fields.

Hostable Commercial Cotton Fee. If hostable volunteer or other hostable noncommercial cotton, including regrowth, is present in a commercial cotton field after the cotton destruction deadline or any extension of the destruction deadline, the cotton grower shall pay to the department a hostable commercial cotton fee.

(1) The hostable commercial cotton fee amount is:

(A) $5.00 per acre for each full or partial week through the end of the fifth week after the destruction deadline or any approved extension of the destruction deadline; and

(B) $7.50 per acre for each full or partial week beginning with the sixth week after the date of the destruction deadline or any approved extension of the destruction deadline.

(2) A hostable commercial cotton fee must be received on or before the 45th day after the date the department gives notice to the cotton grower that the fee is due.

(3) Notice is given under this section on the date:

(A) the notice is personally delivered to the person owing the fee or to any agent, of the person owing the fee, who typically receives business correspondence on behalf of that person; or

(B) if mailed, three days after the date the notice is mailed to the person owing the fee or to any agent, of the person owing

the fee, who typically receives business correspondence on behalf of that person.

(4) An administrative penalty for each day payment is delinquent may be assessed against a person who fails to pay the fee required by this subsection in a timely manner.

(5) In addition to administrative penalties, the department is also authorized to destroy, or contract for the destruction of, any hostable cotton for which the applicable fee has not been paid. If it becomes necessary for the department to contract with someone to destroy the hostable cotton, the cotton grower must reimburse the department for 150% of the actual costs required for destruction. If a cotton grower does not reimburse the department within 30 days after the date the department or contractor completes destruction or the date the department issues a bill requesting payment, whichever is later, the department may place a lien against the property on which the hostable cotton was located.

§20.31. Hostable Volunteer and Other Noncommercial Cotton in Locations Other Than Commercial Cotton Fields.

(a) Cotton grown under a noncommercial cotton permit issued by the department under §3.53 of this title (relating to Prohibition of Planting of Cotton) is exempt from the requirements of this section.

(b) Except as provided by subsection (a) of this section, volunteer and other noncommercial cotton shall be destroyed by the grower or landowner prior to becoming hostable, if the volunteer or other noncommercial cotton is:

(1) in a crop field or other location that is not a commercial cotton field; and

(2) in a boll weevil quarantined area, as established by §20.11 of this chapter in conjunction with §§20.12 - 20.14 of this chapter.

(c) Upon discovery of hostable volunteer or other hostable noncommercial cotton described by subsection (a) of this section, the department will give notice to the grower or landowner, or both the grower and the landowner, to destroy the hostable volunteer or other noncommercial cotton within 14 days after the date notice is given.

(1) Crop fields. If hostable volunteer or other hostable noncommercial cotton located in a crop field, that is not a commercial cotton field, is not destroyed on or before the 14th day after notice is given, the department or a person designated by the department may monitor and treat the cotton for boll weevil. The monitoring and treatments will continue until the cotton becomes non-hostable.

(2) Other locations. If hostable volunteer or other hostable noncommercial cotton not located in a crop field or commercial cotton field is not destroyed on or before the 14th day after notice is given, the department may declare the location a public nuisance, destroy the cotton, and charge the landowner 150 percent of the actual destruction costs.

(d) Hostable Noncommercial Cotton Fee. If hostable volunteer or other hostable noncommercial cotton in a crop field, or other location that is not a commercial cotton field, is not destroyed on or before the 14th day after notice is given, the grower or landowner shall pay a hostable noncommercial cotton fee of $5.00 per acre for each full or partial week until the cotton is destroyed. If hostable volunteer or other hostable noncommercial cotton is present in less than fifty percent of the crop field or other location that is not a commercial cotton field, then the fee will be based on one-half of the total acreage of the crop field or other location that is not a commercial cotton field. The total fee per acre shall not exceed the per acre assessment for boll weevil eradication that would be applicable if the location were a commercial cotton field. Fees will cease to accrue on the earlier of:

(1) the date a department inspector finds all hostable volunteer or other hostable noncommercial cotton has been destroyed; or

(2) the date the grower or landowner notifies the department that all hostable volunteer or other hostable noncommercial cotton has been destroyed, provided that all hostable volunteer or other hostable noncommercial cotton is found to be destroyed during the first department inspection of the crop field or other location that is not a cotton field after the grower or landowner notifies the department.

(e) Notice is given under this section on the date:

(1) the notice is personally delivered to the grower or landowner or to any agent, of the grower or landowner, who typically receives business correspondence on behalf of the grower or landowner; or

(2) if mailed, three days after the date the notice is mailed to the grower or landowner or to any agent, of the grower or landowner, who typically receives business correspondence on behalf of the grower or landowner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY

The Board of Directors (Board) of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (TDA) proposes the repeal of Subchapter A, §§28.1 - 28.15, Subchapter B, §§28.21 - 28.36, Subchapter C, §§28.41 - 28.52, Subchapter D, §§28.61 - 28.72, and Subchapter E, §§28.81 - 28.88 and proposes new Subchapter A, §§28.1 - 28.6, Subchapter B, §§28.10 - 28.19, Subchapter C, §§28.20 - 28.36, Subchapter D, §§28.40 - 28.48, Subchapter E, §§28.50 - 28.55 and Subchapter F, §§28.60 - 28.63. The repeal and new Chapter 28 are proposed to implement new programs authorized with the enactment of Senate Bill 1016 (SB 1016), 81st Legislature, 2009. As part of its review by the Sunset Advisory Commission, TDA, working with the TAFA Board, developed a strategic plan for the TAFA programs, which was adopted by the Sunset Advisory Commission and put into law in SB 1016. SB 1016 amends Chapters 44 and 58 of the Texas Agriculture Code to provide for a restructuring of programs administered by TAFA to include the modification of the interest rate reduction program, formerly the linked deposit program, establishment of a new loan guarantee program, a new young farmer interest rate reduction program and a new young farmer grant program and the elimination of the young farmer loan guarantee program. Rules for all of the new programs will be included in Chapter 28, as will existing rules relating to the collection of assessments by county tax-assessor collectors for deposit into the Texas Agricultural Fund. The Board is also re-

pealing Chapter 30, concerning the Young Farmer Loan Guarantee Program, in a separate submission.

The repeal of Chapter 28 includes the repeal of the program rules for the Farm and Ranch Finance Program currently found in Chapter 28, Subchapter B, and the Rural Development Finance Program, currently found in Chapter 28, Subchapter C. These rules are proposed for repeal because those programs are no longer utilized by the Board and were eliminated as part of the restructuring of the TAFA programs. However, because there are pending credits under the Rural Development Finance Program, those rules will still govern transactions processed under those rules.

New Subchapter A will consist of §§28.1 - 28.6 and will provide the general framework of the financial aid programs administered by TAFA. New Subchapter B will consist of §§28.10 - 28.19 and will provide the rules that govern the Interest Rate Reduction Program, which provides loan guarantees to foster the creation and expansion of enterprises based on agriculture in this state. New Subchapter C consists of §§28.20 - 28.36 and will provide the rules that govern the Agricultural Loan Guarantee Program, which provides loan guarantees to assist in the establishment or enhancement of a farming or ranching operation or an agricultural-related business. New Subchapter D consists of §§28.40 - 28.48 and will provide the rules that govern the Young Farmer Interest Rate Reduction Program, which provides loan guarantees to encourage private commercial loans and provide an economic benefit to young farmers for the purpose of creating or expanding an agricultural business in this state. New Subchapter E will consist of §§28.50 - 28.55 and will provide the rules that govern the Young Farmer Grant Program, which provides financial assistance in the form of matching grant funds to young farmers for the purpose of creating or expanding an agricultural business in this state. New Subchapter F will consist of §§28.60 - 28.63 and will provide the rules that govern the administration of the collection of assessments by county tax assessor-collectors as provided for in §502.174 of the Texas Transportation Code.

Mr. Rick Rhodes, assistant commissioner for rural economic development, has determined that for the first five-year period the proposed repeal and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal or new sections.

Mr. Rhodes also has determined that for each year of the first five years the proposed repeal and new sections are in effect, the public benefit anticipated as a result of enforcing the repeal and new sections will be economic stimulus in the business of agriculture in Texas. Except for nominal fees required to be paid by applicants to the programs, there will be no adverse fiscal impact on small or large businesses, or individuals required to comply with the repeal or new sections as proposed.

Comments on the proposal may be submitted to Allen Regeher, Financial Collections Officer, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. FINANCIAL ASSISTANCE PROGRAM RULES

4 TAC §§28.1 - 28.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 28, Subchapter A, is proposed pursuant to Texas Agriculture Code (the Code), §58.022, which provides the Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; and Texas Government Code, §2001.006, which provides the Board with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Texas Agriculture Code, Chapter 58, is affected by the proposal.

§28.1. Authority.

§28.2. Purpose.

§28.3. Definitions.

§28.4. Examination of Records.

§28.5. Written Communication with the Authority.

§28.6. Texas Agricultural Fund.

§28.7. Project Eligibility Requirements.

§28.8. Filing Requirements and Consideration of Applications.

§28.9. Contents of Qualified Application.

§28.10. General Terms and Conditions of the Authority's Financial Assistance.

§28.11. Criteria for Approval of Financial Assistance.

§28.12. Loan Administration.

§28.13. Eligible Private Lenders.

§28.14. Collateral Administration.

§28.15. Criteria for Approval of a Participation Purchased.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. FARM AND RANCH FINANCE PROGRAM

4 TAC §§28.21 - 28.36

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 28, Subchapter B, is proposed pursuant to Texas Agriculture Code (the Code), §58.022, which provides the TAFA Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; and the Code, §59.022, which provides the Board with the authority to adopt rules to carry out the Farm and Ranch Finance Program.

The Texas Agriculture Code, Chapters 58 and 59, are affected by the proposal.

§28.21. Authority.

§28.22. Purpose.

§28.23. Definitions.

§28.24. Examination of Records.

§28.25. Written Communication with the Texas Agricultural Finance Authority.

§28.26. Farm and Ranch Finance Program Fund.

§28.27. Eligible Uses of Loan Proceeds.

§28.28. Applicant Requirements.

§28.29. Filing Requirements and Consideration of Application.

§28.30. Contents of the Application.

§28.31. Criteria for Approval of a Loan.

§28.32. General Terms and Conditions of the Authority's Financial Commitment.

§28.33. Partial Release.

§28.34. Default by Borrower.

§28.35. Default Proceedings.

§28.36. Administration of Financing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. RURAL DEVELOPMENT FINANCE PROGRAM

4 TAC §§28.41 - 28.52

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 28, Subchapter C, is proposed pursuant to Texas Agriculture Code (the Code), §58.022, which provides the TAFA Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; and the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the Board.

The Texas Agriculture Code, Chapter 58, is affected by the proposal.

§28.41. Authority.

§28.42. Purpose.

§28.43. Definitions.

§28.44. Examination of Records.

§28.45. Written Communication with the Authority.

§28.46. Texas Agricultural Fund.

§28.47. Project Eligibility Requirements.

§28.48. Filing Requirements and Consideration of Applications.

§28.49. Contents of Qualified Application.

§28.50. General Terms and Conditions of the Authority's Commitment.

§28.51. Criteria for Approval of a Commitment.

§28.52. Collateral Administration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. LINKED DEPOSIT PROGRAM

4 TAC §§28.61 - 28.72

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 28, Subchapter D, is proposed pursuant to Texas Agriculture Code (the Code), §44.007, which authorizes the Board to establish rules for an interest rate reduction program and promulgate rules for the loan portion of that program.

The Texas Agriculture Code, Chapters 44 and 58 are affected by the proposal.

§28.61. Definitions.

§28.62. Introduction.

§28.63. Purpose.

§28.64. Scope.

§28.65. Application Procedures for Applicant.

§28.66. Application Procedures for Lender.

§28.67. Procedure for Review.

§28.68. Acceptance and Rejection Procedures.

§28.69. Use of the Loan Proceeds.

§28.70. Program Limitations.

§28.71. Severability.

§28.72. Communications with the Authority.

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SUBCHAPTER E. PREFERRED LENDER PROGRAM RULES

4 TAC §§28.81 - 28.88

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 28, Subchapter E, is proposed pursuant to Texas Agriculture Code (the Code), §58.022, which provides the Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; and the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board.

The Texas Agriculture Code, Chapter 58, is affected by the proposal.

§28.81. Purpose.

§28.82. Definitions.

§28.83. Qualifications for the Preferred Lender Program (PLP).

§28.84. Preferred Lender Program Approval Process.

§28.85. Required Information for a Commitment Request to the Program(s).

§28.86. Approval or Denial and Issuance of Notification.

§28.87. Commitments in Default.

§28.88. Review of Preferred Lenders by the Authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER A. FINANCIAL ASSISTANCE RULES

4 TAC §§28.1 - 28.6

New Chapter 28, Subchapter A, is proposed pursuant to Texas Agriculture Code (the Code), §58.022, which provides the Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; and Texas Government Code, §2001.006, which provides the Board with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Texas Agriculture Code, Chapter 58, is affected by the proposal.

§28.1. Authority.

(a) Through action of the Texas Legislature and the approval of the Texas voters, the Texas Agricultural Finance Authority is authorized to issue general obligation bonds, or other indebtedness backed by the State of Texas, and revenue bonds to provide financial assistance to eligible agricultural businesses through direct loans, loans to lenders, purchasing participations in loans, loan insurance, or a loan guaranty program.

(b) Effective September 1, 2009, the Texas Public Finance Authority has the exclusive authority to act on behalf of the Texas Agricultural Finance Authority in issuing debt instruments authorized to be issued by the Texas Agricultural Finance Authority.

(c) A reference in law to a debt instrument issued by the Authority, in the context of a new debt instrument issued on or after September 1, 2009, means a debt instrument issued by the Texas Public Finance Authority on behalf of the Texas Agricultural Finance Authority.

§28.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Agricultural Finance Act, Texas Agriculture Code, Chapter 58, as amended.

(2) Agricultural business--A business that is or proposes to be engaged in producing, processing, marketing, or exporting of an agricultural product, that is the entity designated to carry out the boll weevil eradication program in accordance with the Texas Agriculture Code, §74.1011, that is or proposes to be engaged in an agricultural-related business in rural areas of Texas, including a business that provides recreational activities associated with the enjoyment of nature or the outdoors on agricultural land, or a state agency or an institution of higher education that is engaged in producing an agricultural product.

(3) Agricultural Product--An agricultural, horticultural, viticultural, or vegetable product, bees, honey, fish or other seafood, planting seed, livestock, a livestock product, a forestry product, poultry, or a poultry product, either in its natural or processed state, or any other agricultural product approved by the Authority, that has been produced, processed, or otherwise had value added to it in this state.

(4) Applicant--Any person, corporation, partnership, cooperative, joint venture, sole proprietorship, the entity designated to carry

out the boll weevil eradication in accordance with Texas Agriculture Code, §74.1011, or a state agency or institution of higher education filing an application with the Authority for financial assistance under any program under this chapter. A lender may submit an application for any of the above-mentioned parties.

(5) Application--An application promulgated and approved by the Texas Agricultural Finance Authority Board of Directors, including supporting documentation and schedules as required by the Authority, for participation in the programs under this chapter.

(6) Authority--The Texas Agricultural Finance Authority.

(7) Board--The board of directors of the Authority.

(8) Business day--A day on which the department is open for business. The term shall not include Saturday, Sunday, or a traditional holiday officially observed by the state. The department's normal business hours are 8:00 a.m. to 5:00 p.m. each business day.

(9) Compliance report--A copy of the final loan documents.

(10) Commissioner--The Commissioner of the Texas Department of Agriculture.

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Current market rate--The rate of interest on a United States treasury bill or note, the maturity date of which most closely matches the maturity date of the loan, or the end of the current biennium of the State, whichever is sooner, as determined by reference to the United States treasury bill or note section of the Wall Street Journal or equivalent publication including an electronic publication, published on the day the loan is priced.

(13) Default--The failure to perform an obligation established by the loan agreement, these rules or the Act.

(14) Department--The Texas Department of Agriculture.

(15) Deputy Commissioner--The Deputy Commissioner of the Texas Department of Agriculture.

(16) Equity--The applicant's contribution to a project in the form of cash, land, or other depreciable property.

(17) Fund--The Texas agricultural fund.

(18) Lender--A financial institution that makes commercial loans and is either a depository of state funds or an institution of the Farm Credit System headquartered in this state including a bank, banking association, savings bank, trust company, mortgage company, investment banker, credit union, underwriter, life insurance company, or any affiliate of those entities, and also including any other financial institution or governmental agency that customarily provides financing of agricultural loans or mortgages, or any affiliate of such an institution or agency, or any institution that the board determines is an experienced and sophisticated financial institution that agrees to participate in a financial program under this chapter.

(19) Loan guarantee amount--With respect to loans made by a lender and guaranteed by the Authority, a sum measured in terms of United States dollars that the Authority pays to the lender to acquire an undivided interest in any loan or, in the case of default by the borrower, the Authority agrees to pay to the lender, not to exceed the percentage as stated in the guaranty agreement.

(20) Programs--Any financial assistance program approved by the Authority board and defined by the rules under this chapter.

(21) Project--An enterprise which would further the expansion or development of production, processing, marketing or exporting of Texas agricultural products or other agricultural-related rural economic development projects.

(22) Qualified application--A completed application, including all documents and information required by the Authority and submitted by the lender or applicant, for participation in a program under this chapter.

(23) Staff--The staff of the Authority or staff of the department performing work for the Authority.

(24) State--The State of Texas.

§28.3. Examination of Records.

Any party requesting the examination of records pursuant to the Open Records Act, Texas Government Code, Chapter 552, shall indicate in writing the specific nature of the document to be viewed, and if copies are desired.

§28.4. Communication with the Authority.

Applications and other written communications to the Authority should be addressed to the attention of the Texas Agricultural Finance Authority, in care of the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Applications or other written communication may also be sent electronically to finance@TexasAgriculture.gov.

§28.5. Texas Agricultural Fund.

The fund, established in the office of the state comptroller, may consist of general obligation bond or commercial paper note proceeds, revenues generated from fees on farm vehicle registrations, appropriations or transfers made to the fund, guaranty fees, monies received from the operation of the program, interest paid on money in the fund from the operation of the program, interest paid on money in the fund and any other monies received from other sources for the fund. The board may provide for the establishment and maintenance of separate accounts within the fund, including loan guaranty program accounts as prescribed by the board.

§28.6. Severability.

In the event that any clause, provision or subsection in this chapter are held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. INTEREST RATE REDUCTION PROGRAM

4 TAC §§28.10 - 28.19

New Chapter 28, Subchapter B, is proposed pursuant to Texas Agriculture Code (the Code), §44.007, which authorizes the

Board to establish rules for an interest rate reduction program and promulgate rules for the loan portion of that program; the Code, §58.022, which provides the Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; and Texas Government Code, §2001.006, which provides the Board with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Texas Agriculture Code, Chapters 44 and 58, are affected by the proposal.

§28.10. Authority.

Through action of the Texas Legislature, the Texas Agricultural Finance Authority is authorized by Chapter 44 of the Code, §44.007 to establish the Interest Rate Reduction Program.

§28.11. Purpose.

The purpose of the Interest Rate Reduction Program is to foster the creation and expansion of enterprises based on agriculture in this state. These sections are adopted to provide standards of eligibility and procedures for obtaining financial assistance under the Act.

§28.12. Scope.

These sections will govern all applications filed under the Interest Rate Reduction Program. The Authority and the comptroller may waive the applicability of any section to an application when such waiver would be in the public interest and would further the purposes of the Act.

§28.13. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 58, as amended, and in Subchapter A of this chapter (relating to Financial Assistance Rules), the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act--The Texas Agriculture Code, Chapter 44, §44.007, as amended with the passage of Senate Bill 1016 by the 81st Texas Legislature, 2009.

(2) Eligible borrower--A person who proposes to use the proceeds of a loan under the interest rate reduction program in a manner that will help accomplish the state's goal of fostering the creation and expansion of enterprises based on agriculture in this state.

(3) Linked deposit--A time deposit governed by a written deposit agreement between the state and the lender that provides that:

(A) the lender pay interest on the deposit at a rate that is not less than the greater of:

(i) the current market rate minus 2%; or

(ii) 1.5%;

(B) the state not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(C) the eligible lending institution agree to lend the value of the deposit to an eligible borrower at a maximum rate that is the linked deposit rate plus a maximum of 4.0%.

(4) Program--The Interest Rate Reduction Program authorized by the Act, §44.007.

§28.14. Application Procedure for Applicant.

(a) An applicant must comply with the following procedures to obtain approval of the application for participation in the program. An applicant shall submit a complete and accurate loan application and any required credit documentation to the lender and an applicant shall supply all required documentation that the Authority requires to determine whether the applicant is qualified under the Act and these sections.

(b) The eligible borrower shall notify the Authority's office in Austin in writing upon receipt of the loan proceeds indicating the amount received, date received, and the total amount of loan drawn to date.

§28.15. Application Procedure for Lender.

A lender must comply with the following procedures to obtain approval of an application for participation in the program.

(1) A lender must be an eligible lending institution, as defined by the Act, to participate in the program.

(2) A lender that is not an approved depository may obtain the appropriate designation by filing a state depository application with the comptroller.

(3) A lender may obtain the application and information about the program from the Authority.

(4) A lender shall determine the applicant's creditworthiness according to the lender's underwriting criteria.

(5) A loan, while under the program, shall be set at a rate of interest established according to the prescribed linked deposit formula under the Act. The linked deposit rate will be recalculated at the end of the fiscal biennium. The eligible borrower's loan rate shall not exceed the linked deposit rate plus 4.0%.

(6) A lender shall forward the original completed and approved application to the Authority. The application may be sent by facsimile transceiver (FAX) or a scanned document by electronic transmission to the Authority in Austin upon review and approval by the lender with the original remitted by next day United States mail.

(7) A lender shall estimate the proposed rate of interest to be charged the eligible borrower. The lender must certify via telephone communication with the comptroller at the time the loan is priced the actual rate of interest before issuance of the linked deposit. A copy of the certification of the eligible borrower's loan rate shall be sent to the Authority or the administrator, as part of the compliance report. In no event shall the actual rate of interest exceed the maximum rate of interest allowable under the Act.

(8) In no instance will the linked deposit be wired to the lender until the loan proceeds have been paid to the eligible borrower. In most cases the entire approved linked deposit amount will be placed as a linked deposit with the applicable lender, except for linked deposits greater than $100,000 which are subject to incremental funding commensurate with principal drawdown.

(9) A lender shall submit the compliance report to the Authority seven days after the loan is funded.

(10) A lender shall notify the Authority in writing immediately upon a default and/or in the case of a prepayment or a principal reduction greater than $5,000 in any one calendar quarter of a loan under the program.

(11) A lender shall comply with all terms and agreements set forth in the state depository handbook, state depository application,

the linked deposit application, and any other agreements and representations made to the Authority and the comptroller, and all other terms and conditions of the loan, these rules and the Act.

§28.16. Procedure for Review.

(a) Upon receipt of the application, staff shall review the application and determine:

(1) the current availability of funds under the program;

(2) the completeness of the application;

(3) the eligibility of the applicant and the lender;

(4) the qualified use of proceeds; and

(5) compliance with the statute and rules.

(b) The staff shall notify the lender of any deficiencies in the application within ten business days after receipt of the application. The applicant and the lender may amend the application to comply with the Authority's comments or withdraw the application.

(c) The board will approve or deny any and all applications under this chapter, provided that the board may delegate such authority to the commissioner and/or the deputy commissioner.

(d) The staff shall retain a copy of the application and forward a duplicate copy of the application with the Authority's recommendation to the comptroller.

§28.17. Acceptance and Rejection Procedures.

(a) The comptroller shall review completed applications from the Authority and notify the Authority of their decision to accept or deny the application.

(b) The Authority will notify the lender if the application has been accepted or denied.

(c) The comptroller will inform the lender of the amount of the required collateralization of the linked deposit. The Authority will forward written notice that the lender has requested funding to the comptroller. The comptroller will wire the linked deposit to the lender in immediately available funds the same day, provided written notice of funding of the loan is received by 9:00 a.m. The comptroller will then provide the Authority confirmation of the linked deposit.

(d) The comptroller shall determine the terms and conditions of the linked deposit once the maturity date is established (it cannot be set beyond the end of the biennium in which the linked deposit is placed), the applicable interest rate for the linked deposit can be determined by referring to the United States treasury bill or note section of the current issue of the Wall Street Journal corresponding with the day the loan is priced. The maturity date is matched to the closest treasury bill maturity. If longer than a year, it is matched to the treasury note with the maturity closest to the linked deposit maturity. In the case of a multiple maturity listing, the maturity with the lowest yield to arrive at the linked deposit rate should be used.

(e) An applicant may reapply for participation in the program after rejection of an application if the application complies with the standards set forth in these sections and under the Act.

(f) A lender shall terminate the linked deposit if the loan is prepaid. Quarterly principal reductions of $1,000 or more will result in a corresponding reduction of the linked deposit in a like amount (rounded to the nearest thousand) at the end of each quarter ending in November, February, May, and August. Upon completion of the quarterly review by the comptroller and the Authority, the linked deposit will be adjusted to the outstanding principal balance rounded to the nearest thousand dollars.

(g) If a lender ceases to be a state depository, the comptroller shall withdraw the linked deposits. If the lender, which has a linked deposit, is purchased by another lending institution, the linked deposit will be reissued to the purchasing institution. Should the linked deposit loan not be obtained by the purchasing institution, then the linked deposit will be returned to the comptroller. The Authority and the comptroller will allow the borrower 90 days to place the loan with another lender.

(h) A late payment on a loan by an eligible borrower does not affect the validity of the linked deposit through the period of the fiscal biennium. Should an eligible borrower default on a loan and the lender proceed with collection by foreclosure, the linked deposit must be returned to the comptroller.

§28.18. Use of Loan Proceeds.

(a) Loan proceeds under the program may be used for any agriculture-related operating expense, including the purchase or lease of land or fixed asset acquisition or improvement, or for any enterprise based on agriculture as identified in the application, but a loan under this program may be applied to existing debt only when required by the lender to finance the expansion of an eligible project.

(b) An applicant or lender may request the Authority to provide a preliminary determination if the anticipated use of the proceeds is a qualified use of proceeds.

(c) Any use of loan proceeds that do not comply with these rules or any misrepresentations made to the Authority shall be a basis for default. The lender shall include a provision in the loan that declares a default and requires acceleration of the loan where the applicant uses the proceeds in any manner that would violate the provisions of the Act, these rules or the loan.

§28.19. Program Limitations.

In addition to the limitations already set forth in these rules, the following limitations apply.

(1) Not more than $30 million may be placed concurrently in linked deposits under the Act.

(2) The maximum amount of a loan under this program is $500,000.

(3) All linked deposits placed under this program shall expire upon expiration of the biennium; however, subject to legislative authorization and approval by the Authority and the comptroller, linked deposits that expired as a result of the expiration of the biennium may be renewed.

(4) The state shall not be liable for any failure to comply with the terms and conditions of the loan, or any failure to make any payments or any other losses or expenses that occur directly or indirectly from the program.

(5) An applicant may have more than one application and linked deposit loan with the program provided that the total applications and total linked deposits approved do not exceed $500,000.

(6) A person shall not receive approval of an application if a previous loan under the program is in default.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. AGRICULTURAL LOAN GUARANTEE PROGRAM

4 TAC §§28.20 - 28.36

New Chapter 28, Subchapter C, is proposed pursuant to Texas Agriculture Code (the Code), §58.022, which provides the Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; the Code, §58.052 as amended by SB 1016, which provides that the Board shall establish by rule tiered loan guarantee limits; and Texas Government Code, §2001.006, which provides the Board with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Texas Agriculture Code, Chapter 58, is affected by the proposal.

§28.20. Authority.
Through action of the Texas Legislature, the Texas Agricultural Finance Authority is authorized by Chapter 58 of the Code, Subchapter E, §§58.051 - 58.056 to establish the Agricultural Loan Guarantee Program.

§28.21. Purpose.
The purpose of the Agricultural Loan Guarantee Program is to provide financial assistance to eligible applicants who desire to establish or enhance a farming or ranching operation or an agriculture-related business.

§28.22. Scope.
The Agricultural Loan Guarantee Program is to provide financial assistance in the form of loan guarantees to eligible applicants who desire to establish or enhance a farming or ranching operation or an agricultural-related business. A loan guarantee recipient may use proceeds from the loan for working capital for operating a farm or ranch, including the lease of facilities and the purchase of machinery and equipment, or for any agriculture-related purpose, including the purchase of real estate, as identified in recipient's documentation submitted in support of the application. These rules establish standards of eligibility and application procedures for the program.

§28.23. Definitions.
In addition to the definitions set out in the Texas Agriculture Code, Chapter 58, as amended, and in Subchapter A of this chapter (relating to Financial Assistance Rules), the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act--Texas Agriculture Code, Chapter 58, Subchapter E, as amended with the passage of Senate Bill 1016 by the 81st Texas Legislature, 2009.

(2) Eligible borrower--A person whose application for loan guarantee under this program has been approved.

(3) Plan--The documentation submitted to the lender that identifies the use of the loan proceeds.

(4) Program--The Agricultural Loan Guarantee Program.

(5) Project--An enterprise that establishes or enhances a farming or ranching operation or an agriculture-related business, which directly benefits production agriculture and furthers agriculture in Texas.

§28.24. Applicant Requirements.
A lender may submit an application on behalf of an applicant if the applicant meets the following requirements:

(1) is a United States citizen and a resident of the State of Texas;

(2) provides evidence that the applicant's farm, ranch, or agriculture-related business is or will be located within the state; and

(3) provides evidence of acceptable equity in the project in accordance with the commercial lender's underwriting standards.

§28.25. Project Costs.
(a) Eligible costs. Financing received under this program may be used to provide working capital for operating a farm, ranch, or agriculture-related business, including: the lease of facilities, the purchase of machinery and equipment, or for any other agriculture-related business purpose, including the purchase of real estate, as defined in the plan.

(b) Ineligible costs. Use of financing received under this Program for any costs other than those identified in the plan shall be considered ineligible costs. A loan guarantee is voidable by the board or the commissioner if the borrower uses loan proceeds for any costs not identified in the plan.

§28.26. Consideration of Applications.
(a) Application forms. A lender seeking a loan guarantee from the Authority must use the application forms provided by the Authority and must include all information requested.

(b) Submission of application. All applicants are required to obtain approval from a lender before applications will be accepted by the Authority. Staff will be available prior to submission of the qualified application to assist applicants and lenders in determining eligibility for a loan guarantee under this subchapter.

(c) Staff review. Staff will review the application for completeness and will notify the commercial lender of any additional information required. When the received application has been determined to be a qualified application, staff will review the lender's basis for approval, evaluate the project and examine whether it meets all program requirements.

(d) Board or commissioner review. The staff shall submit a credit memorandum to the board which shall include a recommendation for approval or denial for each qualified application received by the program. The board shall approve or deny each qualified application. The board may impose additional terms and conditions as part of its approval. The board may delegate to the commissioner or deputy commissioner the authority to take any and all action described in this subsection.

(e) Notification of approval. Upon approval of the qualified application, staff will notify the lender in writing identifying the terms and conditions of the loan guarantee. The lender will prepare the written agreements and documents necessary to close the loan in accordance with the terms and conditions set forth in the notice of approval. The staff will send the lender final notice of guarantee approval after review and approval of the closing documents. Certain time limits may be set regarding the acceptance of loan commitments by the applicant and the lender; however, in no event shall the time period exceed 45

days from date of notification unless previously approved. The lender will disburse the loan according to the terms and conditions of the note and/or loan agreement.

(f) Denial of application. If the application is denied, staff will notify the lender in writing, identifying the reasons for denial. Applicants who have been denied may re-apply to the loan guarantee program.

(g) Providing false information. An applicant who knowingly provides false information in an application shall be disqualified from obtaining a loan guarantee under the program and shall be liable to the Authority and the department for any expense incurred by the Authority or the department as a result of the falsity. If the falsity is discovered after approval of a loan guarantee, the falsity may constitute grounds for revocation of the guarantee, and the Authority shall be entitled to exercise all its rights under the loan documents.

(h) Reporting to the board. Staff shall report to the board at each board meeting the status of loans of the Authority and any applications approved by the commissioner under the program since the last meeting of the board.

§28.27. Contents of the Application.

The applicant must present to the lender the information necessary to determine if the applicant is eligible and qualified to receive a loan guarantee under the program. Such information will include the following:

(1) the application checklist form for the program provided by the Authority;

(2) the plan, as submitted to the lender, for the applicant's proposed farm, ranch, or agriculture-related business to be financed, including a budget for the proposed operation;

(3) a completed application for a loan from a commercial lender on which an eligible applicant has indicated how the loan proceeds will be used to implement the applicant's plan; and

(4) the signed statement of a loan officer of the commercial lender that a loan guarantee is requested for approval of the loan application.

§28.28. Application Process.

(a) A qualified application will be considered by the board at the first available meeting of the Authority or by the commissioner when the staff has had sufficient time to complete its review of the qualified application.

(b) Approval of qualified applications will be subject to the availability of funds in the fund.

(c) A nonrefundable application fee of not less than $100 will be required with each qualified application. An origination fee no less than 1.0% of the loan guarantee amount will be due within ten days of the initial funding of each loan.

(d) Applications will be analyzed in accordance with the requirements and criteria set forth in the Act and in this subchapter.

§28.29. General Terms and Conditions of the Authority's Financial Commitment.

(a) Maximum amount of loan guarantee. A guarantee shall not exceed:

(1) $750,000 or 70% of the loan amount, whichever is less;

(2) $500,000 or 80% of the loan amount, whichever is less;

(3) $250,000 or 90% of the loan amount, whichever is less.

(b) Program limit. The Program has a limit of three times the balance of the Texas Agricultural Fund less any portion used in the Young Farmer Interest Rate Reduction Program and the Young Farmer Grant Program, calculated on an annual basis as of August 31 each year.

(c) Security. Financial commitments approved under this program must be secured by a first lien on collateral of a type and value which, when considered with other criteria, in the judgment of the board or the commissioner affords reasonable assurance of repayment of the loan.

(d) Closing of the loan. The commissioner or a designee may attend the verification and signing of closing documents at the time, date, and location determined by the commercial lender.

(e) Closing costs. All closing costs associated with the closing of an approved loan, including the Authority's review of the closing documents by independent legal counsel, may be charged to the borrower.

(f) Co-participation. An applicant or eligible borrower may seek co-participation in financial assistance from other private and governmental sources. In any event, the Authority's maximum guarantee for any loan may not exceed the loan guarantee limits, with the lender(s) remaining at risk for at least 10% of the loan.

(g) Duration of Guarantee. The duration of the loan guarantee approved by the Authority must not exceed the lesser of the useful life of the assets being financed or 10 years.

(h) Interest rate. The interest rate on the guaranteed loan (not including guarantee fees) shall be the rate charged by the lender and approved by the Authority. To be eligible for a guarantee under the program, a loan with a term of more than one year must have a fixed interest rate.

§28.30. Reporting Requirements.

(a) Each eligible borrower shall provide all information as requested by the lender and the Authority may request copies of any and all information provided to the lender.

(b) Each lender shall report in writing to the Authority as follows:

(1) notification if the loan is either adversely classified or the lender has placed a reserve amount to cover any potential loss due to the loan;

(2) quarterly monitoring reports indicating loan balance, repayment status, and any credit changes reported to the commercial lender as indicated on the prescribed form to be supplied by the Authority;

(3) notification to the Authority of the payment of all personal or real property taxes; and

(4) notification in the event of any breaches or defaults in the terms, conditions, or covenants of the note, loan agreement, or other loan documents.

(c) If necessary, the Authority may request other reports or documentation reasonably necessary for an assessment of the borrower's compliance with the program.

§28.31. Collection Activity.

Any collection activity of a loan guaranteed under this subchapter must be approved by the Authority.

§28.32. Criteria for Approval of Loan Guarantee.

(a) The board or the commissioner shall consider the following factors in deciding whether to approve an application for a loan guarantee:

(1) the anticipated benefits from granting a loan guarantee to the eligible applicant, including both potential job creation and commercial benefits to the agricultural industry;

(2) the eligible applicant's qualifications;

(3) the feasibility of the eligible applicant's plans;

(4) other repayment sources available to the eligible applicant; and

(5) any other factor or circumstance within statutory authority and reasonably related to the goals and objectives of the Act.

(b) Eligibility of the lender. The lender originating a loan must have a continuing ability to evaluate, perform, and service the loan; to make the necessary reports as identified in the rules of the program; and to collect the loan, if requested by the Authority, upon default. The commercial lender must agree to exercise due diligence in the servicing, maintenance, review, and evaluation of performance without regard to the existence of the Authority's guarantee or any other limitation of risk. The board or the commissioner reserves the right to decline a loan guarantee, or revoke a loan guarantee to a lender which does not present sufficient evidence that they have the capacity or interest to appropriately make and service the loan. The board may revoke or limit a loan guarantee if the lender fails to substantially comply with financial industry standards pertaining to reasonably prudent administration, origination, servicing, or underwriting of loans, or if the lender fails to comply with all obligations required under agreements with the Authority.

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional guidelines used by the Authority in the loan guarantee review and approval process. The Credit Policy and Procedure may be obtained from the Texas Agricultural Finance Authority, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711 or at finance@TexasAgriculture.gov.

§28.33. Loan Administration.

The lender shall service the loan and receive all payments of principal and interest, in accordance with lender's loan documents. In accordance with the lenders guarantee agreement with the Authority, the lender is obligated to service the loan even after an event of default.

§28.34. Eligible Lender.

The Authority may request documentation as necessary from any lender that seeks a loan guarantee or has an active loan guarantee under this subchapter.

§28.35. Loan Guarantee Administration.

(a) Except as otherwise provided by state law, by these rules or by resolution of the board, the staff, with the approval of the commissioner, the deputy commissioner of agriculture, or the official of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs, shall have the authority to act on behalf of the Authority, without specific board approval, in regard to the on going servicing, collection, settlement, and enforcement of each and every loan guaranteed by the Authority under the program. Such authority shall include, without limitation, the actions required to be taken by the Authority under any loan agreement, and any other agreement entered into by the Authority concerning a loan guaranteed by the Authority under the program.

(b) Nothing in this section shall prevent the staff or the commissioner, the deputy commissioner, or the official of the department designated by the commissioner of agriculture from submitting any matter to the board for its consideration and approval.

§28.36. Interest Rebate Requirements and Procedures.

(a) The board may independently establish a rate reduction (percent and amount) from time to time in its sole discretion to be eligible in the form of a rebate to qualifying eligible borrowers; however, in any one calendar year, the rate reduction per eligible borrower shall not exceed three percentage points or a maximum amount of $10,000.

(b) The interest rebate payment is calculated for the term and amount of the guarantee commitment provided by the Authority.

(c) The eligible borrower and lender must agree to all the criteria for the program found in this subchapter.

(d) The lender must agree to provide the necessary information to the eligible borrower to verify the interest payment on the guaranteed loan.

(e) To verify the amount of interest paid the eligible borrower must submit one or more of the following to the Authority:

(1) A payment remittance advice from the lender that identifies the amount of the interest paid by the eligible borrower on the guaranteed loan;

(2) A copy of the lender's transaction history for the loan identifying the application of the payment; or

(3) Any other documentation required by the Authority that verifies the calculation of the total interest paid by the approved applicant on the guaranteed loan.

(f) The Authority will notify the eligible applicant in writing if the verification documentation is deemed insufficient for processing.

(g) Within 30 days of receipt of proper verification documentation, the Authority will prepare and present documentation to the state comptroller's office for issuance of a voucher from the Account.

(h) The Authority will file appropriate federal tax statements each year as required by the United States Internal Revenue Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
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SUBCHAPTER D. YOUNG FARMER INTEREST RATE REDUCTION PROGRAM RULES

4 TAC §§28.40 - 28.48

New Chapter 28, Subchapter D, is proposed pursuant to Texas Agriculture Code (the Code), §58.022, which provides the Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; the Code, §58.072, as added

by SB 1016, which authorizes the TAFA Board to establish rules for a young farmer interest rate reduction program and promulgate rules for the loan portion of that program; and Texas Government Code, §2001.006, which provides the Board with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Texas Agriculture Code, Chapter 58, is affected by the proposal.

§28.40. Authority.

The Texas Agricultural Finance Authority is authorized by Chapter 58 of the Code, Subchapter F, §§58.071 - 58.075 to promulgate rules and procedures to establish the Young Farmer Interest Rate Reduction Program.

§28.41. Purpose.

The purpose of the Young Farmer Interest Rate Reduction Program is to encourage private commercial loans and provide an economic benefit to young farmers for the purpose of creating or expanding an agricultural business in this state. These sections are adopted to provide standards of eligibility and procedures for participating in the interest rate reduction provided under the Act.

§28.42. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 58, as amended, and in Subchapter A of this chapter (relating to Financial Assistance Rules) the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Act--Texas Agriculture Code, Chapter 58, Subchapter F, Texas Agriculture Code §§58.071 - 58.075, as enacted by the passage of Senate Bill 1016 by the 81st Texas Legislature, 2009.

(2) Eligible borrower--A person that is 18 years of age or older but younger than 46 years of age at the time of submitting a loan application and who is approved for participation in the program.

(3) Linked deposit--A time deposit governed by a written deposit agreement between the state and the lender that provides that:

(A) the lender pay interest on the deposit at a rate that is not less than the greater of:

(i) the current market rate minus 3%; or

(ii) .5%;

(B) the state does not withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(C) the lender agrees to lend the value of the deposit to an eligible borrower at a rate not to exceed the linked deposit rate plus 4%.

(4) Program--The Young Farmer Interest Rate Reduction Program.

§28.43. Application Procedure for Applicant.

(a) An applicant must comply with the following procedures to obtain approval of the application for participation in the program. An applicant shall submit a complete and accurate loan application and any required credit documentation to the lender and an applicant shall supply all required documentation that the Authority requires to determine whether the applicant is qualified under the Act and these sections.

(b) The eligible borrower shall notify the Authority's office in Austin in writing upon receipt of the loan proceeds indicating the amount received, date received, and the total amount of loan drawn to date.

§28.44. Application Procedure for Lender.

A lender must comply with the following procedures to obtain approval of an application for participation in the program.

(1) A lender must be an eligible lending institution, as defined by the Act, to participate in the program.

(2) A lender that is not an approved depository may obtain the appropriate designation by filing a state depository application with the comptroller.

(3) A lender may obtain the application and information about the program from the Authority.

(4) A lender shall determine the applicant's creditworthiness according to the lender's underwriting criteria.

(5) A loan, while under the program, shall be set at a rate of interest established according to the prescribed linked deposit formula under the Act. The linked deposit rate will be recalculated at the end of the fiscal biennium. The eligible borrower's loan rate shall not exceed the linked deposit rate plus 4.0%.

(6) A lender shall forward the original completed and approved application to the Authority. The application may be sent by facsimile transceiver (FAX) or a scanned document by electronic transmission to the Authority in Austin upon review and approval by the lender with the original remitted by next day United States mail.

(7) A lender shall estimate the proposed rate of interest to be charged the eligible borrower. The lender must certify via telephone communication with the comptroller at the time the loan is priced the actual rate of interest before issuance of the linked deposit. A copy of the certification of the eligible borrower's loan rate shall be sent to the Authority or the administrator, as part of the compliance report. In no event shall the actual rate of interest exceed the maximum rate of interest allowable under the Act.

(8) In no instance will the linked deposit be wired to the lender until the loan proceeds have been paid to the eligible borrower. In most cases the entire approved linked deposit amount will be placed as a linked deposit with the applicable lender, except for linked deposits greater than $100,000 which are subject to incremental funding commensurate with principal drawdown.

(9) A lender shall submit the compliance report to the Authority seven days after the loan is funded.

(10) A lender shall notify the Authority in writing immediately upon a default and/or in the case of a prepayment or a principal reduction greater than $5,000 in any one calendar quarter of a loan under the program.

(11) A lender shall comply with all terms and agreements set forth in the state depository handbook, state depository application, the linked deposit application, and any other agreements and representations made to the Authority and the comptroller, and all other terms and conditions of the loan, these rules and the Act.

§28.45. Procedure for Review.

(a) Upon receipt of the application, staff shall review the application and determine:

(1) the current availability of funds under the program;

(2) the completeness of the application;

(3) the eligibility of the applicant and the lender;

(4) the qualified use of proceeds; and

(5) compliance with the statute and rules.

(b) The staff shall notify the lender of any deficiencies in the application within ten business days after receipt of the application. The applicant and the lender may amend the application to comply with the Authority's comments or withdraw the application.

(c) The board will approve or deny any and all applications under this chapter, provided that the board may delegate such authority to the commissioner and/or the deputy commissioner.

(d) The staff shall retain a copy of the application and forward a duplicate copy of the application with the Authority's recommendation to the comptroller.

§28.46. Acceptance and Rejection Procedures.

(a) The comptroller shall review completed applications from the Authority and notify the Authority of their decision to accept or deny the application.

(b) The Authority will notify the lender if the application has been accepted or denied.

(c) The comptroller will inform the lender of the amount of the required collateralization of the linked deposit. The Authority will forward written notice that the lender has requested funding to the comptroller. The comptroller will wire the linked deposit to the lender in immediately available funds the same day, provided written notice of funding of the loan is received by 9:00 a.m. The comptroller will then provide the Authority confirmation of the linked deposit.

(d) The comptroller shall determine the terms and conditions of the linked deposit once the maturity date is established (it cannot be set beyond the end of the biennium in which the linked deposit is placed), the applicable interest rate for the linked deposit can be determined by referring to the United States treasury bill or note section of the current issue of the Wall Street Journal corresponding with the day the loan is priced. The maturity date is matched to the closest treasury bill maturity. If longer than a year, it is matched to the treasury note with the maturity closest to the linked deposit maturity. In the case of a multiple maturity listing, the maturity with the lowest yield to arrive at the linked deposit rate should be used.

(e) An applicant may reapply for participation in the program after rejection of an application if the application complies with the standards set forth in these sections and under the Act.

(f) A lender shall terminate the linked deposit if the loan is prepaid. Quarterly principal reductions of $1,000 or more will result in a corresponding reduction of the linked deposit in a like amount (rounded to the nearest thousand) at the end of each quarter ending in November, February, May, and August. Upon completion of the quarterly review by the comptroller and the Authority, the linked deposit will be adjusted to the outstanding principal balance rounded to the nearest thousand dollars.

(g) If a lender ceases to be a state depository, the comptroller shall withdraw the linked deposits. If the lender, which has a linked deposit, is purchased by another lending institution, the linked deposit will be reissued to the purchasing institution. Should the linked deposit loan not be obtained by the purchasing institution, then the linked deposit will be returned to the comptroller. The Authority and the comptroller will allow the borrower 90 days to place the loan with another lender.

(h) A late payment on a loan by an eligible borrower does not affect the validity of the linked deposit through the period of the fiscal biennium. Should an eligible borrower default on a loan and the lender proceed with collection by foreclosure, the linked deposit must be returned to the comptroller.

§28.47. Use of Loan Proceeds.

(a) Loan proceeds under the program may be used for any agriculture-related operating expense, including the purchase or lease of land or fixed asset acquisition or improvement, or for any enterprise based on agriculture as identified in the application, but a loan under this program may be applied to existing debt only when required by the lender to finance the expansion of an eligible project.

(b) An applicant or lender may request the Authority to provide a preliminary determination if the anticipated use of the proceeds is a qualified use of proceeds.

(c) Any use of loan proceeds that do not comply with these rules or any misrepresentations made to the Authority shall be a basis for default. The lender shall include a provision in the loan that declares a default and requires acceleration of the loan where the applicant uses the proceeds in any manner that would violate the provisions of the Act, these rules or the loan.

§28.48. Program Limitations.

In addition to the limitations already set forth in these rules, the following limitations apply.

(1) Not more than that amount from the fund as determined by the board may be placed concurrently in linked deposits under the Act.

(2) The maximum amount of a loan under this program is $500,000.

(3) All linked deposits placed under this program shall expire upon expiration of the biennium; however, subject to legislative authorization and approval by the Authority and the comptroller, linked deposits that expired as a result of the expiration of the biennium may be renewed.

(4) The state shall not be liable for any failure to comply with the terms and conditions of the loan, or any failure to make any payments or any other losses or expenses that occur directly or indirectly from the program.

(5) An applicant may have more than one application and linked deposit loan with the program provided that the total applications and total linked deposits approved do not exceed $500,000.

(6) A person shall not receive approval of an application if a previous loan under the program is in default.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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SUBCHAPTER E. YOUNG FARMER GRANT PROGRAM RULES

4 TAC §§28.50 - 28.55

New Chapter 28, Subchapter E, is proposed pursuant to Texas Agriculture Code (the Code), §58.022, which provides the Board

with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; the Code, §58.091, as added by SB 1016, which provides that the Board shall adopt rules to administer the young farmer grant program and selection criteria; and Texas Government Code, §2001.006, which provides the Board with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Texas Agriculture Code, Chapter 58, is affected by the proposal.

§28.50. Purpose.

The purpose of the program is to provide financial assistance in the form of matching grant funds to young farmers for the purpose of creating or expanding an agricultural business in this state. These sections are adopted to provide standards of eligibility and procedures for the grant program.

§28.51. Authority.

The Texas Agricultural Finance Authority is authorized by Chapter 58 of the Code, Subchapter G, §§58.091 - 58.095 to promulgate rules and procedures to establish the Young Farmer Grant Program.

§28.52. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Agriculture Code, §§58.091 - 58.095.

(2) Grantee--A person awarded funds under this subchapter.

(3) Matching Funds--Expenditures by the Grantee or made to sustain, create or expand the Grantee's agricultural business.

(4) Program--The Young Farmer Grant Program as authorized by Subchapter G of the Texas Agriculture Code.

§28.53. Eligibility.

A person is eligible to receive a Young Farmer Grant if:

(1) on the date the grant application is due the applicant is 18 years of age or older but younger than 46 years of age;

(2) the applicant is or will be involved in creating or expanding an agricultural business in this state;

(3) the applicant agrees to provide matching fund documentation; and

(4) the applicant agrees to use funds for the purpose of either creating or expanding an agricultural business in this state.

§28.54. Use of Grant Award.

Funds received under this subchapter may only be used for activities related to creating or expanding an agricultural business in Texas.

§28.55. Administration of Program.

(a) The Board shall determine the availability of funds for the Program on a fiscal year basis.

(b) The Board shall adopt selection criteria for the Program. The Board shall approve a form for use as the Program's grant application which shall state the selection criteria, due date, and award date.

(c) The Board shall set two periods during each fiscal year in which the Authority will receive and approve grant applications. Notice of these grant periods will be published in the *Texas Register* at least twice per fiscal year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. RULES FOR DEPOSITION AND REFUND OF ASSESSMENT FEES

4 TAC §§28.60 - 28.63

New Chapter 28, Subchapter F, is proposed pursuant to Transportation Code, §502.174, as amended by SB 1016, which provides for the collection of an assessment for deposit in the Texas Agricultural Fund, and provides that TAFA shall prescribe procedures for a refund of the assessment.

The Texas Agriculture Code, Chapter 58, and the Transportation Code, Chapter 502, are affected by the proposal.

§28.60. Purpose and Application of Rules.

The purpose of this subchapter is to provide for the administration of the collection of assessments by county tax assessor-collectors as provided for in §502.174 of the Texas Transportation Code; and to provide for the remittance of such assessments to the comptroller for deposit in the Texas agricultural fund.

§28.61. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Assessment--A voluntary fee paid on each commercial motor vehicle registered under the Transportation Code, §502.174.

(2) Request for refund--The written request filed by a payor of an assessment, which identifies the tag number and the sticker number for each registered vehicle and the total amount of the requested refund.

§28.62. Collection of Funds by County Tax Assessor-Collector and Remittance to Comptroller.

(a) Each county tax assessor-collector shall collect the voluntary assessment required by the Transportation Code, §502.174.

(b) Each county tax assessor-collector shall provide notice of the refund procedures defined in §28.63 of this title (relating to Refunding of Assessment) to persons paying an assessment at the time of payment.

(c) The assessments collected shall be remitted by each county tax assessor-collector to the comptroller, by way of the Authority, on a monthly basis due on or before the 15th of the following month.

(d) The assessments collected shall be remitted by check made payable to the "Texas Agricultural Finance Authority". The remittance

shall be mailed to the Authority at the post office box designated on the Remittance Advice form, and shall be deemed paid when deposited by the comptroller in the Texas agricultural fund.

(e) The assessments shall be sent with two completed forms provided by the Authority: the Remittance Advice form; and the Detailed Report of Collections form.

§28.63. Refunding of Assessment.

(a) At the time of payment, the county tax assessor-collector shall notify each payor of the assessment that a refund is available, and shall provide the payor with a request for refund form. Each payor may request a refund by filing a request for refund with the Authority. The request must include all information required on such form, including proof of payment, and must be sent to the address indicated on the form within 30 days of payment of the assessment.

(b) The staff shall process the refund request. If all prerequisites have been met for payment of the refund, staff shall then forward to the comptroller a voucher requesting payment of the refund. Upon receipt of the voucher, the comptroller shall refund the assessment for which a request for refund is made.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 30. TEXAS AGRICULTURAL FINANCE AUTHORITY: YOUNG FARMER LOAN GUARANTEE PROGRAM

The Board of Directors (Board) of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture (TDA) proposes the repeal of Chapter 30, Subchapters A - C, concerning the Texas Agricultural Finance Authority: Young Farmer Loan Guarantee Program. The repeal is proposed to eliminate unnecessary sections in this chapter to conform to new requirements established under Senate Bill (SB) 1016, 81st Legislative Session, 2009, restructure the programs and funding for those programs administered by the Board and the department, eliminate the Young Farmer Loan Guarantee Program and establish a new loan guarantee program, young farmer interest rate reduction program and a young farmer grant program. The repeal eliminates all subchapters in Chapter 30. Subchapters B, relating to Rules For Deposition And Refund of Assessment Fees and Subchapter C, relating to Interest Rate Reduction Program Rules, have been revised and moved to new Chapter 28, which was filed in a separate submission and is published in this edition of the *Texas Register.*

Rick Rhodes, assistant commissioner for rural economic development, has determined that, for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of the administration and enforcement of the repeal.

Mr. Rhodes also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of implementation of the repeal will be the elimination of unnecessary rules. There will be no adverse fiscal impact on microbusinesses, small businesses or individuals required to comply with the repeals.

Written comments on the proposal may be submitted to Rick Rhodes, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL PROCEDURES

4 TAC §§30.1 - 30.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 30, Subchapter A, is proposed pursuant to Texas Agriculture Code (the Code); the Code, §58.022, which provides the TAFA Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; and Texas Government Code, §2001.006, which provides the Board with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The proposal affects the Texas Agriculture Code, Chapter 58.

§30.1. Authority.

§30.2. Purpose.

§30.3. Definitions.

§30.4. Applicant Requirements.

§30.5. Project Costs.

§30.6. Filing Requirements and Consideration of Applications.

§30.7. Contents of the Application.

§30.8. Application Process.

§30.9. General Terms and Conditions of the Authority's Financial Commitment.

§30.10. Reporting Requirements.

§30.11. Repayment Schedule.

§30.12. Criteria for Approval of a Loan Guarantee.

§30.13. Loan Administration.

§30.14. Eligible Commercial Lender.

§30.15. Loan Guarantee Administration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. RULES FOR DEPOSITION AND REFUND OF ASSESSMENT FEES

4 TAC §§30.50 - 30.54

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 30, Subchapter B, is proposed pursuant to Transportation Code, §502.174, as amended by SB 1016, which provides for the collection of an assessment for deposit in the Texas Agricultural Fund, and provides that TAFA shall prescribe procedures for a refund of the assessment.

The Texas Agriculture Code, Chapter 58, and the Transportation Code, Chapter 502, are affected by the proposal.

§30.50. Authority.

§30.51. Purpose and Application of Rules.

§30.52. Definitions.

§30.53. Collection of Funds by County Tax Assessor-Collector and Remittance to Comptroller.

§30.54. Refunding of Assessments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902516
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 463-4075

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SUBCHAPTER C. INTEREST REDUCTION PROGRAM RULES

4 TAC §§30.60 - 30.63

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal of Chapter 30, Subchapter C, is proposed pursuant to Texas Agriculture Code (the Code); the Code, §44.007, which authorizes the Board to establish rules for an interest rate reduction program and promulgate rules for the loan portion of that program; the Code, §58.022, which provides the TAFA Board with the authority to adopt rules to carry out its duties under the Code, Chapter 58; the Code, §58.023, which provides that the Board shall adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board; and Texas Government Code, §2001.006, which provides the Board with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

The Texas Agriculture Code, Chapters 44 and 58, are affected by the proposal.

§30.60. Authority.

§30.61. Purpose and Application of Rules.

§30.62. Definitions.

§30.63. Interest Reduction Program Requirements and Procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §84.105

The Finance Commission of Texas (commission) proposes new §84.105, concerning Indigency Affidavit for Appeal of Conditional Delivery Determination, with regard to motor vehicle sales finance licensees.

With the enactment of House Bill 2556 (HB 2556), the 81st Texas Legislature added §348.013 to the Texas Finance Code in order to outline the rights and duties of the parties to conditional delivery agreements of motor vehicles. Among other things, HB 2556 provides certain limitations on conditional delivery agreements in Texas, such as a maximum term of 15 days and inclusion in the agreement of the agreed value of any trade-in motor vehicle.

In addition, HB 2556 states that an amount paid or required to be paid under Texas Finance Code, §348.013(g) regarding trade-in value is subject to review by the Consumer Credit Commissioner (commissioner). The trade-in value becomes important if the prospective sale is not consummated and the dealer is unable to

return the prospective retail buyer's vehicle. The commissioner's determination regarding trade-in value may be appealed, and those requesting an appeal are required by §348.013(m) to pay a deposit to secure payment of the costs of the hearing, unless they cannot afford it and file an affidavit to that effect. HB 2556 authorizes the commission to prescribe the form and content of this affidavit.

The purpose of the new rule is to implement HB 2556 by specifying the requirements for the affidavit (indigency affidavit) that may be filed by a prospective retail buyer who is unable to pay the deposit required for appeal of a conditional delivery determination made by the commissioner. The required information closely tracks the contents of an affidavit under Rule 145, Texas Rules of Civil Procedure. The agency has modeled the sample indigency affidavit after similar forms used commonly in the Texas and federal court systems.

Section 84.105 outlines the required information that a prospective retail buyer may file when that individual cannot afford to pay the deposit required under Texas Finance Code, §348.013(m) for appeal of a determination made by the commissioner under §348.013(g). The affiant must provide information under the following categories: monthly income, property, monthly expenses, and debts and other liabilities. Additionally, the rule states that the federal poverty guidelines will be used by the commissioner when evaluating an individual's affidavit for waiver of the required deposit.

The proposed new rule also provides a sample affidavit. Use of the model affidavit is not required, although any affidavit submitted must contain the required information as specified in the rule text.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn has determined that for each year of the first five years the new rule is in effect the public benefit anticipated will be clarification of the requirements for indigency affidavits and the availability of a sample affidavit for interested parties. There is no anticipated cost to persons who are required to comply with the new rule as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the new rule as proposed.

Comments on the proposed new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed rule is published in the *Texas Register.* At the conclusion of the 31st day after the proposed rule is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

This new section is proposed under Texas Finance Code, §348.013(m) (Acts 2009, 81st Legislature), which authorizes the commission to adopt rules to prescribe the form and content of this affidavit. The new rule is also proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed new section are contained in Texas Finance Code, Chapter 348.

§84.105. Indigency Affidavit for Appeal of Conditional Delivery Determination.

(a) Required information. An affidavit under Texas Finance Code, §348.103(m) filed with the hearings officer must contain the following information:

(1) the name of the prospective retail buyer;

(2) a statement by a notary public identifying the prospective retail buyer, and stating that the prospective retail buyer personally appeared before the notary and made the statements under oath;

(3) the following statement: "I am over 18 years of age and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. Due to my financial situation, I cannot afford to pay the deposit required under Texas Finance Code, §348.013(m). I wish to appeal the Consumer Credit Commissioner's determination under §348.013(g) regarding my conditional delivery agreement with (Insert Name and Address of Retail Seller and OCCC license number). The following information accurately states my income, assets, expenses, and liabilities.";

(4) nature and amount of monthly income from the following sources:

(A) employment;

(B) government entitlement;

(C) spouse, if spouse's income is available to the prospective retail buyer; and

(D) any other income;

(5) type and approximate value of property owned (other than homestead), including make, model, and year of any motor vehicles owned;

(6) checking or savings account information, including:

(A) name and location of financial entity;

(B) approximate amount of money held in account;

(7) approximate amount of any cash on hand;

(8) monthly expenses, including expenses from the following example sources:

(A) rent/mortgage;

(B) utilities;

(C) food;

(D) child care;

(E) child support;

(F) health care;

(G) car payment;

(H) transportation;

(I) insurance;

(J) clothes/laundry;

(K) finance charges; and

(L) any other monthly expenses;

(9) information regarding debts and other liabilities, including:

(A) name of creditor;

(B) total debt amount; and

(C) monthly payment;

(10) number of dependents;

(11) the following statement: "As the prospective retail buyer, I am unable to pay the deposit required by Texas Finance Code, §348.013(m) for the appeal of the Consumer Credit Commissioner's conditional delivery determination. I verify that the statements made in this affidavit are true and correct.";

(12) the date the affidavit was signed;

(13) the prospective retail buyer's signature and printed name;

(14) the prospective retail buyer's address; and

(15) the notary public's seal and signature.

(b) Filing. The affiant should file the affidavit with the hearings officer through the commissioner.

(c) Commissioner's evaluation. The commissioner will use the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2) when evaluating an individual's affidavit for waiver of the deposit required by Texas Finance Code, §348.013(m). The commissioner will consider the particular financial situation of the affiant in the process of determining whether the affiant's request for wavier of the deposit should be granted.

(d) Sample affidavit. A sample affidavit under Texas Finance Code, §348.013(m) is presented in the following example.
Figure: 7 TAC §84.105(d)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200902486
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 936-7660

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CHAPTER 89. PROPERTY TAX LENDERS
SUBCHAPTER G. TRANSFER OF TAX LIEN

7 TAC §89.701, §89.702

The Finance Commission of Texas (commission) proposes new §89.701, concerning Sworn Document Authorizing Transfer of Tax Lien and §89.702, concerning Certified Statement of Transfer and Amount Paid by Transferee, with regard to property tax lenders. The new rules proposed in §89.701 and §89.702 outline new Subchapter G, concerning Transfer of Tax Lien.

In Texas, a property owner who owes property taxes to a taxing unit may allow another person, often called a transferee or property tax lender, to pay the property tax on the owner's behalf. The tax lien then passes from the taxing unit to the transferee. While the Texas Tax Code outlines certain items that must be included in the documents to transfer a tax lien, model forms do not presently exist to execute the transfer and certify that the transfer occurred and the amounts paid.

In Senate Bill 1620 (SB 1620), the 81st Texas Legislature amended Texas Tax Code, §32.06(a-4), directing the commission to promulgate rules prescribing "the form and content of the sworn document under Subsection (a-1) and the certified statement under Subsection (b)." These two forms are used to transfer tax liens from the taxing unit to the transferee or property tax lender.

The purpose of the new rules is to implement SB 1620 by specifying the requirements for the sworn document as provided in Texas Tax Code, §32.06(a-1) and the certified statement as provided in §32.06(b). The agency reviewed forms that are currently in use by several property tax lenders in conjunction with the relevant statutory provisions. The proposed rules track the forms already used by the industry.

Section 89.701 outlines the required information that the property owner must provide to the taxing unit to authorize the transfer of the tax lien to the transferee. The sworn statement verifies that the property tax lender is paying the outstanding taxes, penalties, interest, and collection costs on the owner's behalf.

Section 89.702 describes the required information that the taxing unit must provide to the transferee in order to certify that the transferee paid the taxes owed the taxing unit on a given piece of property, and that the tax lien was transferred to the transferee.

Both proposed new rules also provide sample model forms. Use of the model forms is not required, although any other forms utilized must contain the required information as specified in the rule text. Additionally, both rules contain optional provisions that may be added to the forms.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has determined that for each year of the first five years the new rules are in effect the public benefit anticipated will be clarification of the requirements for documents used to transfer tax liens and the availability of sample model forms for interested parties. It is the agency's belief that the clarity of the proposed rules and model forms will benefit both the property tax lender industry and the taxing units.

There is no anticipated cost to persons who are required to comply with the new rules as proposed. Persons required to comply with the new rules are already required by statute to provide the majority of the information described by the rules. The rules provide model forms that comply with the statutes. In fact, the proposed rules may result in a potential cost reduction for persons who are required to comply that utilize the model forms. The rules are anticipated to reduce costs and increase the efficiency of business for property tax lenders by not requiring the investment of resources in the development of forms. There will be no adverse economic effect on small or micro-businesses, as the uniformity of the model forms will either provide a neutral or positive effect on small businesses. Aside from the potential cost savings resulting from use of the model forms, there will be no effect on individuals required to comply with the new rules as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed rules are published in the *Texas Register.* At the conclusion of the 31st day after the proposed rules are published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code, §351.007 (Acts 2007, 80th Legislature, Chapter 1220), which authorizes the commission to adopt rules to ensure compliance with the "Property Tax Lender License Act," and Texas Tax Code, §32.06(a-4)(3) (Acts 2009, 81st Legislature), which authorizes the commission to adopt rules to prescribe the form and content of the sworn document and certified statement under §32.06.

The statutory provisions affected by the proposed new sections are contained in Texas Tax Code, §32.06, and Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Legislature, Chapter 1220, effective September 1, 2007).

§89.701. Sworn Document Authorizing Transfer of Tax Lien.

(a) Required information. A sworn document under Texas Tax Code, §32.06(a-1) filed with the tax assessor-collector must contain the following information:

(1) the name of the county where the property is located;

(2) a statement that after the document is recorded, it is to be returned to the transferee;

(3) a statement by a notary public identifying the affiant, either property owner or authorized representative, and stating that the affiant personally appeared before the notary and made the statements under oath;

(4) a statement by the property owner or authorized representative that the affiant is over 18 years of age and is capable of making the affidavit, and that the facts stated in the affidavit are within the affiant's personal knowledge and are true and correct;

(5) a statement by the affiant that either the affiant or the entity represented by the affiant owns the real property described in the document;

(6) a description of the property that includes:

(A) the account number or property identification number used by the taxing unit(s);

(B) the legal description of the property; and

(C) the street address of the property, if applicable;

(7) the amount paid to the taxing unit(s), itemized as follows:

(A) taxes;

(B) interest;

(C) penalties;

(D) collection costs;

(8) the tax years for the amount paid;

(9) the transferee's name;

(10) the transferee's license status, evidenced by:

(A) if licensed, the transferee's OCCC property tax lender license number; or

(B) if exempt from licensing under Texas Finance Code, §351.051(c)(1):

(i) an affidavit stating the entity's type of organization that qualifies it for the exemption;

(ii) any charter number assigned by the governmental authority that issued the entity's charter; and

(iii) the address of the entity's main office; or

(C) if exempt from licensing under Texas Finance Code, §351.051(c)(2), the certificate issued by the OCCC indicating the entity's exemption;

(11) the transferee's street address;

(12) the following statement: "Pursuant to Texas Tax Code §32.06, I hereby authorize the above-named transferee or transferee's agent (the "Transferee"), to pay all taxes, penalties, interest, and collection costs imposed by any and all local taxing units or their agents on the real property, described above, for the tax years listed above. I further authorize and direct the tax assessor-collector(s) for said taxing units to issue a tax receipt with the collector's seal of office or notarized signature to the Transferee and to certify that 1) the taxes and any penalties and interest on the subject property and collection costs have been paid by the Transferee on behalf of the owner; and 2) the tax lien on the owner's property has been transferred to the Transferee.";

(13) the following statement: "I have been given notice that individual owners who are age 65 or older or disabled may be eligible for a tax deferral under Texas Tax Code §33.06 on their homestead property.";

(14) the date the document was signed;

(15) the signature and printed name of the property owner or authorized representative;

(16) the representative capacity or title of the authorized representative, if applicable; and

(17) the notary public's seal and signature.

(b) Optional information. The following information may be added to the sworn document:

(1) a notice of confidentiality rights disclosure substantially similar to the required notice or disclosure under Texas Property Code, §11.008;

(2) a statement of reliance stating that the affiant represents that the information is true and correct and that the transferee is relying on that representation in making the transfer;

(3) a statement that the property either is or is not the property owner's homestead;

(4) a statement that there are no federal liens against the property.

(c) Sample sworn document. A sample sworn document under Texas Tax Code, §32.06(a-1) is presented in the following example. Figure: 7 TAC §89.701(c)

§89.702. Certified Statement of Transfer and Amount Paid by Transferee.

(a) Required information. A certified statement under Texas Tax Code, §32.06(b) issued by a tax assessor-collector must contain the following information:

(1) the name of the county where the property is located;

(2) the date the certification is executed;

(3) a description of the property that includes:

(A) the account number or property identification number used by the taxing unit(s);

(B) the legal description of the property; and

(C) the street address of the property, if applicable;

(4) the taxing unit(s) transferring a lien or liens to the transferee;

(5) the amount paid to the taxing unit(s), itemized as follows:

(A) taxes;

(B) interest;

(C) penalties;

(D) collection costs;

(6) the tax years for the amount paid;

(7) the property owner's name;

(8) the transferee's name;

(9) the transferee's street address;

(10) the following statement: "I, (Insert Name of Collector), tax assessor-collector for (Insert Name of Taxing Unit) and for all taxing units for which (Insert Name of Taxing Unit) collects ad valorem taxes, certify that the above-named transferee or transferee's agent ("Transferee") has paid the amount paid listed above due to the above-named taxing units on the property described above, and that the tax liens held by taxing units on the property for the tax years listed above are hereby transferred to Transferee in accordance with Texas Tax Code §32.06. I have issued a receipt to Transferee in conjunction with this certification reflecting the amount of taxes, penalties, interest, and collection costs paid.";

(11) the name of the tax collector-assessor;

(12) the name of the taxing unit(s);

(13) the signature of the tax assessor-collector, or that of the tax assessor-collector's deputy;

(14) one of the following:

(A) the tax assessor-collector's seal of office; or

(B) a notary public's seal of office and a statement that the certified statement was subscribed and sworn to before a notary public by the tax assessor-collector or the tax assessor-collector's deputy; and

(15) a statement that after the document is recorded, it is to be returned to the transferee.

(b) Optional information. The following information may be added to the certified statement:

(1) a compliance statement for a tax lien transfer under Texas Tax Code, §32.06(a-2)(1) or (a-2)(2)(A) or (a-2)(2)(B);

(2) a statement that the tax assessor-collector does not review the information provided by other parties for accuracy;

(3) a statement that the tax assessor-collector's certification of the amounts paid and that the transfer occurred does not constitute the rendering of legal advice;

(4) a statement regarding the obligation of the taxing units under Texas Tax Code, §32.06(b) to deliver the tax receipt and the statement attesting to the transfer of the tax lien to the transferee within 30 days.

(c) Sample certified statement. A sample certified statement under Texas Tax Code, §32.06(b) is presented in the following example.

Figure: 7 TAC §89.702(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.101

The Credit Union Commission (Commission) proposes amendments to §91.101, concerning Definitions and Interpretations. The proposed amendments add six new definitions, modify three definitions, and delete two definitions. Appraisal, Finance Code, market value, pecuniary interest, real estate, and TAC are now defined in this section, while the definitions of core capital and corporate credit union have been deleted as no longer necessary. The definition of application has been expanded to include any request for approval to engage in any type of activity or operation. The catastrophic act definition was amended to include man-made disasters. Finally, the definition of a construction or development loan was modified to include loans for renovation or development of property already owned by the borrower if the renovation or construction changed the use of the property.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amendments to the rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar,

General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amended rule is Texas Finance Code, §15.402.

§91.101. Definitions and Interpretations.

(a) Words and terms used in this chapter that are defined in Finance Code §121.002, have the same meanings as defined in the Finance Code. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Application--a written request filed by an applicant with the department seeking approval to engage in various credit union activities, transactions, and operations [~~incorporate, amend articles of incorporation or bylaws, deviate from standard bylaws, obtain a certificate of authority to do business in the state of Texas~~] or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Appraisal--a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of a specifically described asset as of a specific date, supported by the presentation and analysis of relevant market information. The market value should not include a going concern value or a special value to a specific property user. An appraisal may contain separate opinions of value for such items so long as they are clearly identified and disclosed.

(6) [~~(5)~~] Automated teller machine (ATM)--an automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(7) [~~(6)~~] Catastrophic act--any natural or man-made disaster such as a flood, tornado, earthquake, [~~etc. or~~] major fire or other disaster resulting in [~~some~~] physical destruction or damage.

(8) [~~(7)~~] Community of interest--a unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of community of interest currently recognized are:

(A) Occupational--based on an employment relationship that may be established by:

(i) employment (or a long term contractual relationship equivalent to employment) by a single employer, affiliated employers or employers under common ownership with at least a 10% ownership interest;

(ii) employment or attendance at a school; or

(iii) employment in the same trade, industry or profession (TIP) with a close nexus and narrow commonality of interest, which is geographically limited.

(B) Associational--based on groups consisting primarily of natural persons whose members participate in activities developing common loyalties, mutual benefits, or mutual interests. In determining whether a group has an associational community of interest, the commissioner shall consider the totality of the circumstances, which include:

(i) whether the members pay dues,

(ii) whether the members participate in furtherance of the goals of the association,

(iii) whether the members have voting rights,

(iv) whether there is a membership list,

(v) whether the association sponsors activities,

(vi) what the association's membership eligibility requirements are, and

(vii) the frequency of meetings. Associations formed primarily to qualify for credit union membership and associations based on client or customer relationships, do not have a sufficient associational community of interest.

(C) Geographic--based on a clearly defined and specific geographic area where persons have common interests and/or interact. More than one credit union may share the same geographic community of interest. There are currently four types of affinity on which a geographic community of interest can be based: persons, who

(i) live in,

(ii) worship in,

(iii) attend school in, or

(iv) work in that community. The geographic community of interest requirements are met if the area to be served is in a recognized single political jurisdiction, e.g., a city or a county, or a portion thereof.

(D) Other--The commissioner may authorize other types of community of interest, if the commissioner determines that either a credit union or foreign credit union has sufficiently demonstrated that a proposed factor creates an identifiable affinity among the persons within the proposed group. Such a factor shall be well-defined, have a geographic definition, and may not circumvent any limitation or restriction imposed on one of the other enumerated types.

(9) [~~(8)~~] Construction or development loan--a financing arrangement for acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar use. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income-producing property or convert the use of income-producing property to a different or expanded use from its former use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income-producing property that do not change its use.

[~~(9) Core capital--has the same meaning as "tier one capital" as set forth in the capital regulations adopted by the appropriate federal banking regulatory agency.~~]

[~~(10) Corporate credit union--a credit union whose field of membership consists primarily of other credit unions.~~]

(10) [~~(11)~~] Day--whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(11) [~~(12)~~] Department newsletter--the monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(12) [~~(13)~~] Field of membership (FOM)--refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(13) Finance Code or Texas Finance Code--the codification of the Texas statutes governing financial institutions, financial businesses, and related financial services, including the regulations and supervision of credit unions.

(14) - (19) (No change.)

(20) Market Value--the most probable price which an asset should bring in a competitive and open market under an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of ownership from seller to buyer where:

(A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised, and acting in their own best interests;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(21) [~~(20)~~]Metropolitan Statistical Area (MSA)--a geographic area as defined by the director of the U.S. Office of Management and Budget.

(22) [~~(21)~~] Mobile office--a branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(23) [~~(22)~~] Office--includes any service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements; however, it does not include the credit union's Internet website. This definition also includes a shared branch or a shared branch network if either:

(A) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or

(B) the service facility is local to the credit union and the credit union is an authorized participant in the service center.

(24) [~~(23)~~] Overlap--the situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(25) Pecuniary interest --the opportunity, directly or indirectly, to make money on or share in any profit or benefit derived from a transaction.

(26) [~~(24)~~] Person--an individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(27) [~~(25)~~] Principal office--the home office of a credit union.

(28) [~~(26)~~] Protestant--a credit union that opposes or objects to the relief requested by an applicant.

(29) Real estate or real property--an identified parcel or tract of land. The term includes improvements, easements, rights of way, undivided or future interest and similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(30) [~~(27)~~] Remote service facility--an automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(31) [~~(28)~~] Reserves--allocations of retained earnings including regular and special reserves, except for any allowances for loan, lease or investment losses.

(32) [~~(29)~~] Resident of this state--a person physically located in, living in or employed in the state of Texas.

(33) [~~(30)~~] Respondent--a credit union or other person against whom a disciplinary proceeding is directed by the department.

(34) [~~(31)~~] Shared service center--a facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union.

(35) [~~(32)~~] Secured credit--a loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(36) TAC--an acronym for the Texas Administrative Code, a compilation of all state agency rules in Texas.

(37) [~~(33)~~] Title or 7 TAC--Title 7, Part 6 [~~VI~~] of the Texas Administrative Code, Banking and Securities, which contains all of the department's rules.

(38) [~~(34)~~] Underserved area--a geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U.S. Bureau of Labor Statistics;

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the State of Texas, or the nation, whichever is higher; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely effected economic development within the specified area.

(39) [~~(35)~~] Uninsured membership share--funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under §122.105 [~~section 122.105~~] of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(40) [~~(36)~~] Unsecured credit--a loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.103

The Credit Union Commission (Commission) proposes amendments to §91.103, concerning Public Notice of Department Activities. The proposed amendments rename the rule to Public Notice of Department Decisions, and further add applications for conversion of a credit union's certificate of incorporation and conversion to a mutual savings institution to the types of applications covered by the rule.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §15.4021, which directs the Commission to adopt rules providing for public notice of department activities, and §122.005, which directs the Commission to adopt rules for providing public notice of applications.

The specific sections affected by the proposed amended rule are Texas Finance Code, §15.4021 and §122.005.

§91.103. Public Notice of Department Decisions [~~Activities~~].

The commissioner shall cause notice of final actions taken by the department on certain activities to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications within 30 days of the action becoming final. The activities covered by this requirement are:

(1) - (5) (No change.)

(6) an application for conversion of a credit union's certificate of incorporation [~~Charter~~] under Texas Finance Code §§122.201, 122.202, [~~or~~] 122.203, or §91.1007 of this chapter (relating to Conversion to a Mutual Savings Institution).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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7 TAC §91.104

The Credit Union Commission (Commission) proposes amendments to §91.104, concerning Notice of Applications. The proposed amendments rename the rule to Public Notice and Comment on Certain Applications, and add an application for conversion to a mutual savings institution to the types of applications covered by the rule.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §15.4021, which directs the Commission to adopt

rules providing for public notice of department activities, and §122.005, which directs the Commission to adopt rules for providing public notice of applications.

The specific sections affected by the proposed amended rule are Texas Finance Code, §15.4021 and §122.005.

§91.104. Public Notice and Comment on Certain [~~of~~] Applications.

(a) Upon receipt of a complete application for authorization to be granted by the department, the commissioner shall cause notice of such application to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications at least 30 days prior to taking action on the request. The activities covered by this requirement are:

(1) - (3) (No change.)

(4) an application for merger or consolidation under Texas Finance Code §122.152; [~~and~~]

(5) an application for conversion of a credit union's certificate of incorporation under §91.1007 of this chapter (relating to Conversion to a Mutual Savings Institution); and

(6) [~~(5)~~] a request by a foreign credit union to do business in Texas under Texas Finance Code §122.013.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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7 TAC §91.105

The Credit Union Commission (Commission) proposes amendments to §91.105, concerning Application for Authorization from the Commissioner. The proposed amendments rename the rule Acceptance of Other Application Forms and revise the language of the rule for clarity.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §§122.001, 122.011, and 122.156, which govern applications submitted to the Commissioner for approval.

The specific sections affected by the proposed amended rule are Texas Finance Code, §§122.001, 122.011, and 122.156.

§91.105. Acceptance of Other Application Forms [~~Applications for Authorization from the Commissioner~~].

Notwithstanding other requirements of this chapter, if another state or federal regulator's application and forms provide all the information required by Texas law, the [~~The~~] commissioner may accept those [~~applications and other~~] forms [~~prescribed by federal or state regulators in lieu of the commissioner's forms~~]. This does [~~The foregoing, however, shall~~] not limit the commissioner's power to require additional information necessary to complete an [~~concerning any~~] application or other form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. ORGANIZATION PROCEDURES

7 TAC §91.201

The Credit Union Commission (Commission) proposes amendments to §91.201, concerning Incorporation Procedures. The amendments add a requirement that the applicants discuss their strategy for securing share and deposit insurance for its members' accounts, and specify that the applicants provide the pro forma financial information in a quarterly format. The amendments also make a grammatical change and correct a typographical error.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar,

General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.001, which permits the Commission to prescribe the form for an application for incorporation and under §122.004 which permits the commissioner to investigate and obtain information concerning applications for incorporation.

The specific sections affected by the proposed amended rule are Texas Finance Code, §122.001 and §122.004.

§91.201. Incorporation Procedures.

(a) (No change.)

(b) Business Plan. The application must include a business plan that covers three years and provides detailed explanations of actions that are proposed to accomplish the primary functions of the credit union. The description should provide enough detail to demonstrate that the institution has a reasonable chance for success, will operate in a safe and sound manner, and will maintain adequate capital to support its operations. Specifically the plan must:

(1) (No change.)

(2) Provide quarterly pro forma financial information for the three years of operation, including annual totals for the Income Statement;

(3) - (4) (No change.)

(5) Discuss the overall marketing/advertising strategy to reach potential members; [~~and~~]

(6) Discuss the credit union's strategy for obtaining required share and deposit insurance protection for its members' accounts; and

(7) [~~(6)~~] Describe the economic forecast for the three years of the plan.

(c) - (d) (No change.)

(e) Proposed credit unions must investigate the possibility of an overlap with existing state or federal credit unions doing business in this state prior to submitting an application. When an overlap situation does arise, officials of the involved entities must attempt to resolve the overlap issue. Typically, an overlap will not be considered adverse to the overlapped credit union if:

(1) the group has fewer [~~less~~] than 3000 primary potential members or the overlap is otherwise incidental in nature;

(2) - (4) (No change.)

(f) (No change.)

(g) The commissioner may approve the application conditioned upon specific requirements being met, but the certificate of incorporation shall not be issued unless such conditions have been met [~~meet~~] within the time specified in the approval order or any extension as set forth in Finance Code §122.006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Commissioner
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7 TAC §91.202

The Credit Union Commission proposes amendments to §91.202, concerning Form of Bylaws; Amendments to Articles of Incorporation and Bylaws. The amendments change the name of the rule to Bylaw and Articles of Incorporation Amendments, delete duplicative language, and make conforming amendments to titles of other proposed rules being amended concurrently.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.011, which sets out the procedure for amending articles of incorporation or bylaws.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.011.

§91.202. Bylaw and Articles of Incorporation Amendments [~~Form of Bylaws; Amendments to Articles of Incorporation and Bylaws~~].

(a) The Standard Bylaws for State Chartered Credit Unions ("Standard Bylaws"), approved [~~adopted~~] by the commission on February 20, 2004, [~~in 2002~~] or as subsequently revised or amended, constitute the bylaws which shall be used by credit union incorporators.

(b) The commissioner is expressly authorized to approve deviations from and amendments to the standard bylaws, [~~. The commissioner may approve a deviation or amendment~~] unless the deviation or amendment violates applicable law [~~the Act or rules of the commission~~].

[~~(c) A credit union may request a deviation from the standard bylaws by submitting a written application to the commissioner. A request for a deviation shall be considered in the same manner as an application to amend bylaws under this section.~~]

(c) [~~(d)~~] Credit unions desiring to amend articles of incorporation or bylaws must submit a written application, in such form as the commissioner may prescribe. The application shall include the text of the amendment, the date that the board of directors adopted the amend-

ment, a brief statement explaining the purpose of the amendment, information regarding the financial impact on the credit union if the amendment is approved, and any other information the commissioner may require to make a decision on the amendment.

(d) [~~(e)~~] The commissioner shall determine whether or not an application is complete within thirty day of its receipt and provide written notice of the determination. If the application is deemed incomplete, the notice shall provide with reasonable specificity the deficiencies in the application.

(e) [~~(f)~~] The commissioner does not need to provide notice as prescribed in §91.103 (relating to Public Notice of Department Decisions [~~Activities~~]) and §91.104 (relating to Public Notice and Comment on Certain Applications [~~Notice of Applications~~]) for applications that apply for standard optional field of membership provisions (1), (2), (3), and (4) as contained in the Standard Bylaws [~~for State Chartered Credit Unions~~] "Appendix A".

(f) [~~(g)~~] A credit union's board of directors may amend its bylaws to adopt any standard bylaw without approval by the commissioner provided:

(1) the wording of the amendment is identical to the Standard Bylaws; and

(2) the credit union submits a completed, fully executed Certification of Resolution of Amendment to Credit Union Bylaws ("Certification") to the commissioner. The commissioner will promptly acknowledge receipt of the Certification. The amendment will be effective as of the date the commissioner acknowledges receipt of the Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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7 TAC §91.203

The Credit Union Commission (Commission) proposes new §91.203, concerning Share and Deposit Insurance Requirements. The proposed new rule moves §91.1110 from Subchapter J to Subchapter B with virtually identical text.

The new rule is proposed as a result of the Credit Union Department's general rule review which determined that the rule should be relocated.

Betsy Loar, General Counsel, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small or micro businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.410, which requires the Commission to adopt, and the commissioner to enforce, rules requiring credit unions to provide share and deposit insurance for members and depositors.

The specific section affected by the proposed rule is Texas Finance Code, §15.410.

§91.203. Share and Deposit Insurance Requirements.

(a) All credit unions in the State of Texas shall obtain share insurance protection as provided in Chapter 95 of this title (relating to Share and Depositor Insurance Protection).

(b) With the approval of the commissioner, and if recognized by its insuring organization, a credit union may, from time to time as determined by its board of directors, issue uninsured membership shares which are subordinate to all other claims, including creditors, shareholders, and the insuring organization. The commissioner may approve the issuance of such accounts conditioned upon specific requirements being met.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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7 TAC §91.205

The Credit Union Commission (Commission) proposes amendments to §91.205, concerning Use of Credit Union Name. The amendments change the name of the rule to Credit Union Name and make grammatical and technical changes to the rule.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.003, which requires credit unions to use only names approved by the commissioner.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.003.

§91.205. [~~Use of~~] Credit Union Name.

(a) Unless a name change has been approved by the commissioner in accordance with the Act and these rules, a [~~A~~] credit union shall do business under the name in which its certificate of incorporation was issued[~~, unless a name change has been approved by the commissioner in accordance with the Act and these rules~~].

(b) - (c) (No change.)

(d) The commissioner shall not issue a certificate of authority to use an assumed business name if the designation might confuse or mislead the public, or if it is not readily distinguishable from, or is deceptively similar to, a name of another credit union lawfully doing business with [~~and that has established~~] an office in this state.

(e) Credit [~~It is the responsibility of the credit~~] union officials are responsible for complying [~~to comply~~] with state and federal law applicable to corporate and assumed names.

(f) Before using an assumed name, a [~~A~~] credit union [~~that intends to use an assumed name~~] shall take reasonable steps to ensure that use of the name will not cause a reasonable person to believe the credit union's [~~result in confusion to the extent that its~~] different facilities are [~~may be mistaken as~~] different credit unions or to believe that [~~the~~] shares or [~~and~~] deposits in one facility [~~deposited at or through the different facilities~~] are separately insured from those of another facility [~~the other facilities~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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7 TAC §91.206

The Credit Union Commission (Commission) proposes amendments to §91.206, concerning Underserved Area Credit Unions--Secondary Capital Accounts. The proposed amendments make non-substantive grammatical and technical changes.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.014, which permits the Commission to adopt rules for the organization and operation of underserved-area credit unions.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.014.

§91.206. Underserved Area Credit Unions--Secondary Capital Accounts.

A credit union that has [~~having~~] been approved for a designation as a Underserved Area Credit Union pursuant to § [~~Section~~] 122.014, Finance Code may issue secondary capital accounts to members or nonmembers of the credit union on the following conditions:

(1) Prior to offering secondary capital accounts, the credit union shall file an application for approval with the commissioner. The application shall be [~~,~~] supported by a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts, along with such other information and data as the commissioner may require.

(2) (No change.)

(3) The [~~maturity of the~~] secondary capital account must mature no earlier than [~~be for a minimum of~~] five years.

(4) - (5) (No change.)

(6) Funds deposited into the secondary capital account, including interest accrued and paid into the capital account, must be available to cover the credit union's realized operating losses [~~realized by the credit union~~] that exceed its net available reserves and undivided earnings (i.e., reserves and undivided earnings exclusive of allowance accounts for loan losses), and to the extent funds are so used, the credit union shall not restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the secondary capital account holder or into a separate account from which the secondary capital account holder may make withdrawals. Losses realized shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

(7) - (8) (No change.)

(9) A secondary capital account contract agreement must be executed by an authorized representative of the account holder and the credit union. The agreement must set [~~which sets~~] forth all of the terms and conditions of this section and contain [~~contains~~] a disclosure and acknowledgement by the account holder that the secondary capital account is not redeemable, will not be insured, may be used to

cover operating losses of the credit union and not be replaced or replenished, and is subordinate to all other claims on the assets of the credit union, including claims of member shareholders, creditors and the credit union's insuring organization. All such contract agreements must be retained by the credit union for the term of the agreement.

(10) - (11) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. MEMBERS

7 TAC §91.310

The Credit Union Commission (Commission) proposes new §91.310, concerning Annual Report to Membership. The proposed new rule sets out the contents of the annual report that must be made available to members. The new rule provides that the report must be posted on the credit union's website, if the credit union maintains a website, and must contain information such as the names and terms of office of the directors, and names of advisory directors, a description of changes in senior management, bylaws and articles of incorporation, financial condition and operating results, field of membership, and services, as well as a summary of the most recent audit. Credit unions that do not have a website must notify members that copies of the report are available on request.

The new rule is proposed as a result of legislation adopted as part of the review of the Credit Union Department by the Sunset Commission (HB 2735).

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small or micro businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.4105, which directs the Commission to adopt rules requiring a credit union to provide an annual report to members.

The specific section affected by the proposed rule is Texas Finance Code, §15.4105.

§91.310. Annual Report to Membership.

(a) Every credit union shall provide to its membership an annual written report, as prescribed in subsection (b) of this section. The report must be updated before the credit union's annual meeting and shall be available on the credit union's website throughout the year. Any credit union that does not maintain a website shall distribute the report at its annual meeting and must give notice to the membership that copies of the annual report are available upon request.

(b) The annual report shall cover the credit union's operations during the preceding calendar year and shall contain, at a minimum, the following information:

(1) the names and dates of expiration of the terms of office for each director on the credit union's board;

(2) the names of any honorary or advisory directors appointed by the board;

(3) a brief description of any changes, since the preceding report required by this section was made available or otherwise provided, to the credit union's:

(A) senior management staff;

(B) bylaws or articles of incorporation;

(C) financial condition and operating results; and

(D) field of membership and any new services offered.

(4) the credit union's current balance sheet and income/expense; and

(5) a summary of the most recent audit completed in accordance with §91.516 of this chapter (relating to Audits and Verifications).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902555
Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.315

The Credit Union Commission (Commission) proposes a new §91.315, concerning Members' Access to Credit Union Documents. The proposed new rule requires credit unions to provide members with notice that certain documents related to the credit union's finances and management are available. The proposed new rule specifies the frequency and methods that a credit union must use to provide the notice to its members, and itemizes the information that must be included in the notice.

The new rule is proposed as a result of legislation adopted as part of the review of the Credit Union Department by the Sunset Commission (HB 2735).

Betsy Loar, General Counsel, has determined that for the first five-year period the new rule is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the proposed new rule.

Ms. Loar has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There is no anticipated effect on small or micro businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions or individuals for complying with the new rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new rule is proposed under the provisions of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §122.107, which directs the Commission to adopt rules for credit unions to provide notice to members of the availability of certain documents.

The specific section affected by the proposed rule is Texas Finance Code, §122.107.

§91.315. Members' Access to Credit Union Documents.

(a) Required Notice. Every credit union shall provide notice to its membership of the availability of certain documents related to the credit union's finances and management.

(b) Delivery of Required Notice. A credit union shall post a copy of the required notice on its website throughout the year. The notice required by this section shall be published in the credit union's newsletter twice a year. If a credit union does not maintain a website or distribute a newsletter at least semiannually, the credit union shall provide the notice with each member's account statement.

(c) Documents Available to Members. Upon request, a member is entitled to review or receive a copy of the most recent version of the following credit union documents:

(1) annual report to the membership;

(2) balance sheet and income statement (the non-confidential pages of the latest call report (NCUA Form 5300) may be given to meet this requirement);

(3) a summary of the most recent annual audit completed in accordance with §91.516 of this chapter (relating to Audits and Verifications);

(4) written board policy regarding access to the articles of incorporation, bylaws, rules, guidelines, board policies, and copies thereof; and

(5) Internal Revenue Service Form 990.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. RESERVES AND DIVIDENDS

7 TAC §91.901

The Credit Union Commission (Commission) proposes amendments to §91.901, concerning Reserve Requirements. The proposed amendments add a provision allowing a credit union to reduce the amount transferred to reserves if the Commissioner approves. The amendments also make grammatical and technical changes to conform with other rules and for clarity.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.104, which directs the commission to establish rules requiring a credit union to contribute to and maintain net worth reserves necessary to protect the interests of its members.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.104.

§91.901. Reserve Requirements.

(a) Definitions. The [~~following~~] words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(b) In accordance with the requirements of §122.104 of the Act, state-chartered credit unions shall set aside a portion of their current gross income, prior to the declaration or payment of dividends, as follows:

(1) A credit union with a net worth ratio below 7.0% shall increase the dollar amount of its net worth reserves by [~~transfer in accordance with GAAP~~] the following amounts at the indicated intervals [~~to its regular reserve account~~] until its net worth ratio equals 7.0% [~~7%~~] of total assets:

(A) - (B) (No change.)

(2) For a credit union in operation less than ten years and having assets of less than $10 million, a business plan must be developed that reflects, among other items, net worth projections consistent with the following:

(A) 2.0% [~~2%~~] net worth ratio by the end of the third year of operation;

(B) 3.5% net worth ratio by the end of the fifth year of operation;

(C) 6.0% [~~6%~~] net worth ratio by the end of the seventh year of operation; and

(D) 7.0% [~~7%~~] net worth ratio by the time it reaches $10 million in total assets or by the end of the tenth year of operation, which ever is shorter.

(3) Whenever the net worth ratio falls below 7.0% [~~7%~~], the credit union shall transfer a portion of its current period net income [~~gross income~~] to its regular reserve in such amounts as described in paragraph (1) of this subsection.

(4) (No change.)

(5) Insuring organization's capital requirements. As applicable, a credit union shall also comply with any and all net worth or capital requirements imposed by an insuring organization as a condition to maintaining insurance on share and deposit accounts. For federally-insured credit unions this includes[~~, including~~] all prompt corrective action requirements contained within Part 702 of the NCUA Rules and Regulations.

(6) Decrease in Required Reserve Transfer. The commissioner, on a case-by-case basis, and after receipt of a written application, may permit a credit union to transfer an amount that is less than the amount required under paragraph (1) of this subsection. A credit union shall submit such statements and reports as the commissioner may, in his discretion, require in support of a decreased transfer request. The application must be received no later than 10 days before the quarter end and shall include but not be limited to:

(A) An explanation of the need for the reduced transfer amount;

(B) Financial statement reflecting the fiscal impact of the required transfer; and

(C) Documentation supporting the credit union's ability to resume the required transfer at a future date certain.

(c) Revised business plan for new credit unions. A credit union that has been in operation for less than ten years and has assets of less than $10 million shall file a written revised business plan within 30 calendar days of the date the credit union's net worth ratio has failed to increase consistent with its current [~~then-present~~] business plan. Failure to submit a revised business plan, or submission of a plan not [~~deemed~~] adequate to either increase net worth or increase net worth within a reasonable time; or failure of the credit union to implement its revised business plan, may trigger the regulatory actions described in subsection (b)(4) of this section.

(d) Unsafe practice. Any credit union which has less than a 6.0% net worth ratio may be deemed to be engaged in an unsafe practice pursuant to §122.255 of the Finance Code. The determination may be abated if, [~~unless~~] the credit union has entered into and is in compliance with a written agreement or order with the department or is in compliance with a net worth restoration or revised business plan approved by the department to increase its net worth ratio. If a credit union has a net worth ratio below 6.0% or is otherwise engaged in an unsafe practice, the department may impose the following administrative sanctions in addition to, or in lieu of, any other authorized supervisory action:

(1) - (3) (No change.)

(e) Supervisory action. Notwithstanding any requirements in this section, the department may take enforcement action against a credit union with capital above the minimum requirement if the credit union's circumstances indicate such action would be appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1003

The Credit Union Commission (Commission) proposes amendments to §91.1003, concerning Mergers/Consolidations. The proposed amendments replace the terms "surviving" and "merging" with "acquirer" and "acquiree" to conform with the terminology used by the Financial Accounting Standards Board. The amendments also update references to the Hart-Scott-Rodino Act.

The amendments are proposed as a result of the Credit Union Department's general rule review.

Betsy Loar, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Loar has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity and ease of use of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under Texas Finance Code §122.156, which sets out the requirements for rules adopted for mergers or consolidations.

The specific section affected by the proposed amended rule is Texas Finance Code, §122.156.

§91.1003. Mergers/Consolidations.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acquirer [~~Surviving~~] credit union--The credit union that will continue in operation after the merger/consolidation.

(2) Acquiree [~~Merging~~] credit union--The credit union that will cease to exist as an operating credit union at the time of the merger/consolidation.

(3) (No change.)

(b) - (c) (No change.)

(d) Plan for Merger/Consolidation. Upon approval of a proposition for merger/consolidation by the boards of directors, the credit unions must prepare a plan for the proposed merger/consolidation. The plan shall include:

(1) (No change.)

(2) the combined financial reports of [~~the~~] two or more credit unions;

(3) - (4) (No change.)

(5) a summary of the products and services proposed to be available to the members of the acquirer [~~surviving~~] credit union, with an explanation of any changes from the current products and services provided to the members;

(6) - (8) (No change.)

(e) Submission of an Application to Merge/Consolidate to Department.

(1) An application for approval of the merger/consolidation will be complete when the following information is submitted to the commissioner:

(A) - (E) (No change.)

(F) if the acquiree [~~merging~~] credit union has $65.2 [~~$50~~] million or more in assets on its latest call report, a statement as to [~~about~~] whether the transaction is subject [~~two credit unions intend~~] to the Hart-Scott-Rodino [~~make a Hart-Scott Rodino~~] Act premerger notification filing requirements [~~with the Federal Trade Commission and, if not, an explanation why not~~]; and

(G) (No change.)

(2) If the acquirer [~~surviving~~] credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the state or federal supervisory authority of the acquirer [~~surviving~~] credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner.

(3) (No change.)

(f) Commissioner Action on the Application.

(1) (No change.)

(2) The commissioner shall deny an application for merger/consolidation if the commissioner finds any of the following:

(A) the financial condition of the acquirer [~~surviving~~] credit union before the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the acquiree [~~merging~~] credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the acquiree [~~merging~~] credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the acquirer [~~surviving~~] credit union to meet the reasonable needs and convenience of members to be served;

(D) - (F) (No change.)

(3) For applications to merge/consolidate in which the products and services of the acquirer [~~surviving~~] credit union after merger/consolidation are proposed to be substantially the same as those of the acquiree [~~merging~~] and acquirer [~~surviving~~] credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

(g) Procedures for Approval of Merger/Consolidation Plan by the Members of Each Credit Union.

(1) (No change.)

(2) Members shall be given advance notice of the meeting in accordance with the credit union's bylaws. The notice of the meeting shall:

(A) - (C) (No change.)

(D) provide the name and location of the acquirer [~~surviving~~] credit union;

(E) - (F) (No change.)

(h) Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the acquirer [~~surviving~~] credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the acquirer [~~surviving~~] credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the completion of the merger/consolidation certification, any article of incorporation or bylaw amendments will be approved and the charter of the acquiree [~~merging~~] credit union will be canceled.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.1110

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Credit Union Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Credit Union Commission (Commission) proposes the repeal of §91.1110, concerning Share and Deposit Insurance Requirements. The Commission proposes the repeal of §91.1110, because it is being proposed as new §91.203 under Subchapter B.

The repeal of the rule is proposed as a result of the Credit Union Department's proposal to move the rule to a new location.

Betsy Loar, General Counsel, has determined that for the first five-year period the rule is repealed there will be no fiscal implications for state or local government as a result of repealing the rule.

Ms. Loar has also determined that for each year of the first five years the rule is repealed, the public benefits anticipated as a result of repealing the rule will be ease of use by credit unions and the public with the new rule replacing the repealed rule. There is no anticipated effect on small or micro businesses as a result of repealing the rule. There is no economic cost anticipated to credit unions or individuals for repealing the rule.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Betsy Loar, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The repeal is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.410, which requires the Commission to adopt, and the commissioner to enforce, rules requiring credit unions to provide share and deposit insurance for members and depositors.

The specific section affected by the proposed repeal is Texas Finance Code, §15.410.

§91.1110. Share and Deposit Insurance Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas proposes amendments to §8.201, relating to Pipeline Safety Program Fees, pursuant to Senate Bill 1658, 81st Texas Legislature (2009), which increases the maximum annual natural gas pipeline safety inspection fee from $0.50 per service line to $1.00 per service line.

The Commission proposes to amend §8.201(b) to increase the assessment rate from $0.50 to $0.70 annually for each service line reported to be in service at the end of each calendar year in order meet the requirements of the pipeline safety program. The pipeline safety inspection fee was created in 2003 to support the pipeline safety program, which is funded partially by federal funds; the remainder is funded by state general revenue dollars. The fee was originally set in 2003, at $0.37 annually for each service line reported by a natural gas distribution system; in 2007, the fee was increased to $0.50. The proposed increase of this fee to $0.70 will fund the Commission's hiring of additional personnel within the Safety Division. Federal funding for the pipeline safety program is tied to the Commission's staffing levels and the Commission's program has been adversely affected by under-staffing. The effective date of Senate Bill 1658 and of this proposed rule amendment will be September 1, 2009.

Mary McDaniel, Director, Safety Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be fiscal implications for State government. Based on the proposed $0.20 increase, the Commission anticipates an increase in revenue. There were 4,697,881 service lines reported at the end of calendar year 2007; the Commission has not yet received the final number of lines in service for the end of calendar year 2008. Historically, however, the Commission has seen an increase of 1.5% each year in the number of reported service lines, so the Commission estimates that at the end of 2008, there were 4,768,349 service lines. A 1.5% increase in that number yields an estimated 4,839,874 service lines for the end of calendar year 2009. Based on that number of lines in service, Ms. McDaniel has determined that the $0.20 annual increase in this fee per service line will increase revenue to the Railroad Commission by approximately $967,975 beginning in the calendar year 2010, and by at least $967,975 in each year of the next four years that the fee remains at $0.70 per service line and there are at least 4,839,874 service lines reported each year. All revenue derived from the pipeline safety program fee, both the $0.70 per service line (and the $100 per master metered system, which the Commission is not proposing to increase), has been appropriated to the Commission to supplement the funds received from the federal Office of Pipeline Safety to support both the Commission's established existing pipeline safety program and the Commission's underground pipeline damage prevention program. If the number of service lines is less than 4,839,874 in either 2010 or 2011, the Commission's revenue will decrease accordingly, and the Commission's appropriation will be reduced as well.

Ms. McDaniel also anticipates that there will be additional costs for state government as a result of enforcing or administering the section as amended. The Commission will add 11.5 new full-time equivalent employees (FTEs) for the pipeline safety program. There will be additional annual expenses for these FTEs of $375,129 for salaries, $107,174 for payroll related costs, $29,400 for travel, $22,020 for operating costs such as rent and gasoline, and $25,943 for additional operating expenses, such lease costs for computers ($23,843) and cell phone usage charges ($2,100) in each year of the first five

years that the proposed amendments will be in effect. There will also be an expenditure of $43,452 for vehicles and $4,800 for computer mounts in vehicles in the first year that the proposed amendments will be in effect, but not in the second through fifth years. Any remaining funds will be used to make up for an anticipated shortfall in federal funding for the pipeline safety program. There will be no other fiscal implications for State government, because state agency customers of natural gas distribution systems are exempt from payment of the pipeline safety program fee.

There will be fiscal implications for local governments, such as municipalities and government housing authorities, that operate natural gas distribution systems; however, these entities are authorized to reimburse themselves by imposing a one-time surcharge to the existing rates charged to their customers. It is possible that there will be a mismatch between the amounts the natural gas distribution system operators remit to the Commission and the amounts they collect from their customers through the surcharge reimbursement mechanism, but the Commission cannot determine whether any discrepancy will be in favor of the natural gas distribution system operators or the customers.

Ms. McDaniel has also determined that for each year of the first five years that the rule as proposed to be amended will be in effect, the public benefit will be the continuation of the Commission's pipeline safety program to ensure public safety with regard to pipeline operations.

Ms. McDaniel has also developed the following analysis of the probable economic cost to persons required to comply with the proposed amendment for each year of the first five years that it will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses subject to the proposed rule, project the economic impact of the rule on small businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The analysis must consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Pursuant to Texas Government Code, §2006.002(c), Ms. McDaniel has estimated that although there will be a cost of compliance for individual, small business, or micro-business natural gas distribution system operators that are currently regulated under the Commission's pipeline safety program, there will not be an adverse impact on individual, small business, or micro-business operators of natural gas distribution systems. For each natural gas distribution operator, regardless of its business organization, the cost of compliance will be an additional $0.20 for each service line reported on the DOT Distribution Annual Report, Form 7100.1-1. However, these entities are authorized to reimburse themselves by imposing a one-time surcharge to the existing rates they charge to their customers. These entities would not incur any additional administrative costs, either for remitting the pipeline safety program fee to the Commission on a timely basis or for assessing the surcharge to customers, because the pipeline safety program fee has been in effect since 2003, and the remittance and billing systems are already in place.

In addition to the cost of compliance for natural gas distribution system operators, there will be a cost of compliance for all individual customers of natural gas distribution systems who will be assessed a surcharge by their provider. For a customer of a natural gas distribution system who has one service line, the additional cost of compliance will be $0.20 per year, which the Commission considers to be *de minimis*. Large commercial and industrial customers of natural gas distribution systems will have additional annual costs of compliance of $0.20 for each service line. State agency customers of natural gas distributions systems are exempt from payment of the pipeline safety program fee.

Because the Commission has determined that there is no adverse impact on small businesses or micro-businesses, pursuant to Texas Government Code, §2001.006, the Commission is not required to consider whether there are any alternative methods for achieving the purpose of this proposal. However, the Commission is required by Senate Bill 1658 and Article VI to assess fees sufficient to generate revenue to cover the general revenue appropriation. The Commission has concluded that requiring all gas distribution system operators to comply with the new fee is essential to the goal of ensuring the health, safety, and environmental and economic welfare of the State. Further, the proposed change in the pipeline safety fee will ensure that the Commission's pipeline safety program is sufficiently staffed to cover all the inspection requirements of the program. The Commission has concluded that increasing the pipeline safety fee is essential to the goal of ensuring the health, safety, and environmental and economic welfare of the State. Minimizing any adverse impacts on small businesses is inconsistent with this goal.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m., Monday, August 3, 2009, which is 31 days after publication in the *Texas Register*. Comments should refer to Docket No. 9880. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments under Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq*.; and Texas Utilities Code,

§121.211, as amended by Senate Bill 1658, 81st Texas Legislature (2009), which authorizes the Railroad Commission to adopt, by rule, an annual inspection fee not to exceed $1.00 for each service line reported by a natural gas distribution system subject to Chapter 121 on the Distribution Annual Report, Form RSPA F7100.1-1; Senate Bill 1 (General Appropriations Act), 81st Texas Legislature (2009), Article VI, Railroad Commission Rider 11, which requires the Commission to assess fees sufficient to generate during the 2010 - 2011 biennium revenue to cover the general revenue appropriation; and Texas Government Code, §2001.006, which authorizes a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Texas Utilities Code, §§121.201 - 121.211, as amended by Senate Bill 1658, 81st Texas Legislature (2009); and 49 United States Code Annotated, §§60101, *et seq*., are affected by the proposed amendments.

Statutory authority: Texas Utilities Code, §§121.201 - 121.211, as amended by Senate Bill 1658, 81st Texas Legislature (2009); 49 United States Code Annotated, §§60101, *et seq*., and Texas Government Code, §2001.006.

Cross-reference to statute: Texas Utilities Code, Chapter 121, as amended by Senate Bill 1658, 81st Texas Legislature (2009); 49 United States Code Annotated, Chapter 601; 81st Texas Legislature (2009).

Issued in Austin, Texas on June 18, 2009.

§8.201. Pipeline Safety Program Fees.

(a) (No change.)

(b) The Commission hereby assesses each operator of a natural gas distribution system an annual pipeline safety program fee of $0.70 [~~$0.50~~] for each service (service line) reported to be in service at the end of each calendar year by each system operator on the Distribution Annual Report, Form F7100.1-1, to be filed on March 15 of each year.

(1) Each operator of a natural gas distribution system shall calculate the total amount of the annual pipeline safety program fee to be paid to the Commission by multiplying the number of services listed in Part B, Section 3, of Department of Transportation (DOT) Distribution Annual Report, Form F7100.1-1, due to be filed on March 15 of each year by $0.70 [~~$0.50~~].

(2) (No change.)

(3) Each operator of a natural gas distribution system shall recover, by a surcharge to its existing rates, the amount the operator paid to the Commission under paragraph (1) of this subsection. The surcharge:

(A) - (C) (No change.)

(D) shall not exceed $0.70 [~~$0.50~~] per service or service line; and

(E) (No change.)

(4) - (6) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902476
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Proposed date of adoption: September 1, 2009
For further information, please call: (512) 475-1295

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CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION
SUBCHAPTER B. PROPANE CONSUMER REBATE PROGRAM

16 TAC §15.125

The Railroad Commission of Texas proposes amendments to §15.125, relating to Application, to make a non-substantive addition to the consumer rebate application form and to provide two other methods of filing the form.

In §15.125, relating to Application, the Commission proposes to amend subsection (a) to add wording to allow applicants to submit another identification number as determined by the Comptroller of Public Accounts as a third option. The two current options are a tax identification number or a Social Security number. In subsection (e), the Commission proposes to allow applicants to submit applications electronically or by facsimile transmission.

Dan Kelly, Director, Alternative Fuels Education and Research Division, has determined that for the first five years that the proposed amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. Participation in all of the division's consumer rebate and incentive programs is voluntary, and the amendments as proposed represent minor administrative changes.

Mr. Kelly has also determined that there will be no cost of compliance with the proposed amendments for individuals, small businesses, or micro-businesses. Participation in all of the division's consumer rebate and incentive programs is voluntary, and the proposed changes would require no additional expenditures of time or money by individuals and companies choosing to participate in the programs.

Mr. Kelly has also determined that the public benefit anticipated as a result of enforcing or administering the section as amended will be additional security for consumer rebate applicants whom the Comptroller's payment requirements allow to use an identification number other than the applicant's Social Security number, and greater convenience and time savings for applicants who choose to submit applications by facsimile or electronically.

The 80th Legislature (2007) adopted HB 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses. The Commission has determined that

the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, and therefore the analysis described in Texas Government Code, §2006.002, is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m. on Monday, August 3, 2009, which is 31 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291 or AFRED Marketing and Public Education Director Heather Ball at (512) 463-7359. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments under the Texas Natural Resources Code, §113.241, which authorizes the Commission to adopt all necessary rules relating to activities regarding the use of LPG and other environmentally beneficial alternative fuels; §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §§113.241, 113.243 and 113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas on June 18, 2009.

§15.125. Application.

(a) Forms. Application for a rebate shall be made by a consumer on forms prescribed for that purpose by the commission. The application for a rebate consists of a one- or two-page form, depending on the type of rebate, verifying the equipment for which the rebate is being sought. The form may require, for example, the make, model, and serial number of the eligible equipment installed or being replaced; the date and physical address of the installation; the applicant's name, address, and telephone number; and the participating propane marketer's or propane equipment supplier's name, address, telephone number, and Railroad Commission LP-Gas license number. The form requires the signature of the applicant and the Company Representative and, for certain rebate amounts, the applicant's tax identification number, [~~or~~] social security number, or any other identification number as determined by the Comptroller of Public Accounts. The required documentation must show that the equipment for which the rebate is being sought is installed and operating in the State of Texas in compliance with Railroad Commission requirements.

(b) - (d) (No change.)

(e) Acceptance. Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application for a rebate on domestic equipment, such as an appliance, must be received at the Commission no later than 30 days following the date of the eligible installation to be eligible for a rebate. An application for a rebate on a motor vehicle, industrial lift truck, or other industrial equipment must be received at the Commission no later than 60 days following the date of the eligible installation to be eligible for a rebate. Applications may be mailed or hand-delivered to the Railroad Commission of Texas, Alternative Fuels Research and Education Division, 1701 North Congress Avenue, Room 11-170O, P.O. Box 12967, Austin, Texas 78711-2967. Applications may also [~~not~~] be scanned and submitted electronically or submitted by facsimile transmission (FAX).

(f) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902477
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER C. LICENSE RENEWALS

22 TAC §571.56

The Texas Board of Veterinary Medical Examiners proposes an amendment to 22 TAC §571.56, concerning Military Service Fee Waiver. The amendment concerns the waiver of licensing fees for military veterans.

The proposed amendment sets forth the procedure for waiver of the active license renewal fee for licensees discharged from active military duty. The amendment describes the status of the individual's license following the Board's receipt of documentation reflecting separation from military service. The amendment provides that upon receipt of form DD214 (separation documentation), the licensee's active license renewal fee is waived for the remainder of the calendar year in which the licensee is discharged from military service. The license is thereafter placed in "active" status, allowing the licensee to practice veterinary medicine in Texas, or renew the license in "inactive status" the year following military separation.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has determined that, for each of the first five years the amended rule is in effect, the anticipated public benefit will be to streamline the process for licensees making the

transition from active military duty into private or public veterinary practice in Texas, as well as to express the Board's appreciation for the service and sacrifice given by the military veteran licensees of Texas.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that "the Board may adopt rules as necessary to administer this chapter."

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.56. Military Service Fee Waiver.

Upon submission of a DD214, the active license renewal fee is waived for the remainder of the calendar year in which the licensee is discharged from military service. A current year renewal certificate will be issued to the licensee in the same manner as if the active renewal fee had been paid for that particular year. Licensee's submission of a DD214 places his or her license in active status allowing the practitioner to practice in the State of Texas or renew their Texas license in inactive status the year following military separation. The waiver of the fee for the balance of the calendar year in which an applicant is discharged from the military service is to be applicable only to those veterinarians who have served at least one year on extended active duty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902509
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 305-7563

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners proposes an amendment to 22 TAC §573.10, concerning Supervision of Non-Licensed Employees. The amendment concerns the requirement that a licensee personally sign any official health documents issued in the licensee's name.

Under the proposed amendment, a licensee must personally sign any official health documents issued by the licensee, or any official health document for which the licensee has received compensation. Further, under the proposed amendment, the licensee will be directly responsible for all actions of non-licensed employees acting under the licensee's directions or authorization, in addition to all actions of non-licensed employees for which the licensee receives compensation.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has determined that, for each of the first five years the amendment is in effect, the anticipated public benefit will be that licensees shall provide better security measures for health certificates issued in their name, or provided in exchange for compensation. The responsibility for actions of a licensee's non-licensed employees will rest solely with the licensee, if said employees are acting under the licensee's direction or authority, or the licensee receives compensation for the non-licensees' actions. This will ensure that licensees provide adequate supervision to non-licensed persons in their employ, thus better protecting the public from persons engaged in the unauthorized practice of veterinary medicine.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses.

Mr. Helmcamp has further determined that there may be nominal economic costs to persons required to comply with the proposed rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that "the Board may adopt rules as necessary to administer this chapter" and §801.151(b) which states the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medical profession.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.10. Supervision of Non-Licensed Employees.

(a) - (c) (No change.)

(d) Delegation Relating to Official Health/Test Documents

(1) A licensee must personally sign any official health documents issued by the licensee, and/or any official health certificates for which the licensee has received compensation, regardless of whether said compensation is ultimately refunded, provided, however, that rabies certificates may be authenticated by either:

(A) - (B) (No change.)

(2) - (5) (No change.)

(e) Responsibility for Acts of Non-Licensed Employees. A licensee may determine a non-licensed employee's qualifications necessary to perform routine patient care and treatment. The licensee is directly responsible for all actions of non-licensed employees acting under the licensee's directions or authorization, and/or for which licensee receives compensation, regardless of whether said compensation is ultimately refunded. A licensee failing to properly supervise a non-licensed employee or improperly delegating care and/or treatment responsibilities may be subject to disciplinary action by the Board.

(f) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902510
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 305-7563

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.24

The Texas Board of Veterinary Medical Examiners proposes an amendment to 22 TAC §573.24, concerning Issuance of Certificates through Direct Knowledge Only. The amendment concerns the requirement that a licensee issue a health certificate attesting to the physical condition of an animal, only after the licensee has personally examined the animal.

Under the proposed amendment, a licensee is deemed to have knowledge of any health certificates issued in his or her name by the licensee's employee and/or maintained in the licensee's patient or client records. The proposed amendment places responsibility for the security of the licensee's health certificate forms solely on the licensee, and requires the licensee to take reasonable care to prevent the misuse of said forms. The proposed amendment also requires a licensee to report any theft or misuse of health certificates to the Board.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has determined that, for each of the first five years the amendment is in effect, the anticipated public benefit will be that licensees shall provide better security measures for health certificates issued in their name. The responsibility for health certificates issued in a licensee's name will be placed squarely on the licensee, thus requiring licensees to properly safeguard said certificates. This will ensure a healthier population of livestock for human consumption, and aid in the prevention of the spread of disease in the nation's commercial livestock and equine herds.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses.

Mr. Helmcamp has further determined that there may be nominal economic costs to persons required to comply with the proposed rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that "the Board may adopt rules as necessary to administer this chapter," and §801.151(b) which states the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medical profession.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.24. Issuance of Certificates Through Direct Knowledge Only.

Licensed veterinarians in this state shall not issue any certificate attesting to the physical condition and/or soundness of an animal without first having personally examined the individual animal and know of their own knowledge, by actual inspection and appropriate tests, that said animals meet the requirements for the issuance of such certificate. Licensee is deemed to have knowledge of certificates issued in his or her name by licensee's employee and/or maintained in licensee's patient or client files. Licensee shall be responsible for the security and proper use of all official certificates, forms, records and reports, and shall take reasonable care to prevent the misuse thereof. A licensee shall immediately report to the Texas Board of Veterinary Medical Examiners the loss, theft or deliberate or accidental misuse of any such certificate, form, record or report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902511
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 305-7563

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.25

The Texas Board of Veterinary Medical Examiners proposes an amendment to 22 TAC §575.25, concerning Recommended Schedule of Sanctions. The amendment concerns the schedule of sanctions available to the Board with regard to licensees who have committed Class A, B or C violations of the Veterinary Licensing Act and/or Board Rules.

The proposed amendment will allow the Board to impose, as a sanction for a licensee's commission of a Class A, B or C violation of the Veterinary Licensing Act and/or Board Rules, that the licensee sit for, and pass, the Texas State Board Licensing Exam, otherwise known as the SBE.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has determined that, for each of the first five years the amendment is in effect, the anticipated public benefit will be that licensees who have been found in violation of the Licensing Act and/or the Rules, will thereafter make more informed decisions with regard to their veterinary practices, by virtue of sitting for the SBE, which tests the licensee's knowledge of the rules of professional conduct and veterinary jurisprudence matters.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses.

Mr. Helmcamp has further determined that there may be minimal economic costs to persons required to comply with the proposed rule, as the SBE currently is only offered at the Board's offices in Austin, Texas.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that "the Board may adopt rules as necessary to administer this chapter".

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.25. Recommended Schedule of Sanctions.

(a) Class A violations. Licensees considered as presenting imminent peril to the public will be considered Class A violators. In determining whether a violation is a Class A, consideration will be given to the disposition of any previously docketed cases, and to the combination of charges which might involve Class B and/or C violations.

(1) - (2) (No change.)

(3) Maximum penalties:

(A) - (C) (No change.)

(D) quarterly reporting certifying compliance with board orders; and/or[.]

(E) Licensee sit for, and pass, the SBE).

(b) Class B violations. Involves licensees who have violated rules and/or statutes or have committed a Class C violation within the last 36-month period. In determining whether a violation is a Class B, consideration will be given to the disposition of the previously docketed cases, and to the combination of charges which might invoke Class A and/or C violations.

(1) - (2) (No change.)

(3) Maximum penalties:

(A) - (B) (No change.)

(C) continuing education in a specified field related to the practice of veterinary medicine that the board deems relevant to the violation(s). The total number of hours mandated are in addition to the number of hours required to renew the veterinary license; [~~and/or~~]

(D) quarterly reporting certifying compliance with board orders; and/or[.]

(E) Licensee sit for, and pass, the SBE.

(c) Class C violations. Involve licensees who have violated the rules and/or statutes, but do not have a history of previous violations. Consideration should be given to the nature and severity of the violation(s).

(1) - (2) (No change.)

(3) Maximum penalties:

(A) six months to one-year suspension with the entire period probated; [~~or~~]

(B) an administrative penalty not to exceed $500 for each violation per day; and/or[.]

(C) Licensee sit for, and pass, the SBE.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902512
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 305-7563

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22 TAC §575.28

The Texas Board of Veterinary Medical Examiners proposes an amendment to 22 TAC §575.28, concerning Complaints--Investigations. The amendment concerns the Board's procedure for requesting patient records from a licensee who is the subject of a complaint initiated pursuant to Chapter 575.

The proposed amendment streamlines the procedure for requesting patient records from a licensee following the Board's receipt of a complaint and assignment of an investigator to the matter. Currently, the rule provides that, upon receipt of a complaint, the Board requests patient records from the licensee related to the subject animal. Upon receipt of said patient records, the Board furnishes the licensee with a copy of the complaint and requests a written response within 21 days. The proposed amendment combines these steps and provides the licensee with a copy of the complaint contemporaneously with the request for patient records.

Dewey E. Helmcamp III, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the

rule as proposed. Mr. Helmcamp has also determined that the rule will have no local employment impact.

Mr. Helmcamp has determined that, for each of the first five years the amendment is in effect, the anticipated public benefit will be a more efficient complaint process, by virtue of less correspondence exchanged between Board and licensee during the initial investigation, and an abbreviated time period for completing the investigation process.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses.

Mr. Helmcamp has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that "the Board may adopt rules as necessary to administer this chapter".

Texas Occupations Code, Chapter 801, is affected by this proposal.

§575.28. Complaints--Investigations.

Investigation of complaints.

(1) - (5) (No change.)

(6) The director of enforcement will assign an investigator to the complaint. A [~~, and the investigator will send a request for patient records to the licensee. Once the investigator receives the patient records, the investigator will send a~~] copy of the complaint will be sent to the licensee, along with a request that the licensee respond to the complaint in writing within 21 days of receipt of the request. The licensee will also be asked to provide a copy of the relevant patient records with the response [~~complaint~~].

(7) - (8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902513
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 305-7563

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners proposes an amendment to §577.15, concerning Fee Schedule. The amendment concerns the Board's Fee Schedule for examinations, application processing, renewals, provisional licenses, open records and returned check fees.

The proposed amendments increase by $25.00, the required fees for current license renewals, inactive renewals, and special licenses. Proportional increases are also made in delinquent renewal fees. These fee increases are required to cover the costs of the Board's legislative appropriation for FY 2010. No changes are made to fees for the State Board Examination or Special License Examination, and the provisional license fee remains $255.

Mr. Dewey E. Helmcamp III, Executive Director, has determined that for the first five-year period the amended section is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section. The fee increases will result in a gain to the State's general revenue of $177,125 in FY 2010; $181,250 in FY 2011; $181,250 in FY 2012; $181,250 in FY 2013; and $181,250 in FY 2014.

Mr. Helmcamp has also determined that for the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be to accurately match the revenues of the agency with expenditures so as not to charge excessive fees for license renewals. There will be no effect on small or micro businesses.

Comments on the proposed amendment may be submitted in writing to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701, phone (512) 305-7555, fax (512) 305-7556, e-mail vet.board@tbvme.state.tx.us and will be received for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

The proposed amendment affects the Chapter 801 of the Texas Occupations Code.

§577.15. Fee Schedule.

The following fees are proposed by the Board:
Figure: 22 TAC §577.15

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902514
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 305-7563

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM
SUBCHAPTER I. REFUNDS, TERMINATION

34 TAC §7.81

The Comptroller of Public Accounts proposes an amendment to §7.81, concerning refunds. This section establishes the criteria that determine how refunds will be calculated when a contract of the Prepaid Higher Education Tuition Program (Program) is cancelled or terminated. This Program is also known as the Texas Tomorrow Fund I and the Texas Guaranteed Tuition Plan and was the Board's first prepaid tuition plan established in 1995. It is governed by the Texas Prepaid Higher Education Tuition Board (Board).

Texas Education Code, §54.632(c) gives the Board the authority to determine how refunds will be calculated when a Program contract is cancelled. The Board has determined that the fund will benefit from a change to the current refund policy as proposed in this amendment. The current refund policy is varied based upon the circumstances underlying a cancellation, i.e., the timing of the cancellation, whether it is voluntary, and the age of the beneficiary, and it allows refunds to include earnings based on the weighted average tuition and required fee rate paid to public or private universities or colleges in effect on the effective date of the refund. The proposed amendment will change the current rule to limit refunds to the amount of money paid for those hours under the contract, less fees, and less any funds paid under the contract. It will also exempt those contracts cancelled due to the death of the purchaser or beneficiary or the graduation of the beneficiary from an eligible educational institution from being assessed a cancellation fee.

The Board believes it is in the best interest of the fund to revise this refund policy in order to extend the financial viability of this Program while providing for a reasonable methodology for refunds. The Program is financially infeasible as actuarial projections reflect a deficiency in future assets needed to pay future liabilities. Because this Program is a guaranteed tuition plan, once these funds are exhausted, the state must compensate out of general revenue for any shortfall under the existing contracts. Through a more financially sound refund policy based on the Board's actuarial analysis, the proposed rule may prolong the inevitable draw on the state's general revenue. The proposed amendment will not affect the disbursement to the schools.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by setting forth the criteria that determine how refunds will be calculated. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Linda Fernandez, CEO and Manager, Educational Opportunities and Investment Division, Post Office Box 13407, Austin, Texas 78711-3407, or transmitted electronically to linda.fernandez@cpa.state.tx.us.

This rule amendment is proposed under Texas Education Code, §54.618(b)(2) which authorizes the Board to adopt rules to implement the Program.

The proposed amendment implements Texas Education Code, §54.632.

§7.81. Refunds.

(a) Refunds shall be made in accordance with provisions of these rules and the prepaid tuition contract, in a manner that will not adversely affect the tax status of the program under applicable provisions of the Internal Revenue Code, as amended from time to time. Refunds shall be governed by these rules as amended and as in effect on the date the request for refund is submitted to the board. The [~~In general, it is the board's intent that the~~] amount of any refund shall be the sum of all payments made under the contract for tuition and required fees, less fees due and payable to the program under the board's fee schedule and less any amounts paid by the program pursuant to the prepaid tuition contract prior to the refund. If a contract is cancelled due to the death of the purchaser or beneficiary or due to the graduation of the beneficiary from an eligible educational institution, no cancellation fee will be assessed against the contract.

(b) Refunds shall be made to the purchaser of the prepaid tuition contract unless otherwise designated by the purchaser in writing to the board in the event of the purchaser's death.

(c) Should a beneficiary terminate his/her student status on or after the date on which the institution denies refunds to students withdrawing for a particular semester, no refund shall be paid under the prepaid tuition contract for amounts relating to such semester.

[~~(d) Examples of circumstances under these rules in which refunds may be made include, but are not limited to, the following.~~]

[~~(1) Under any plan if the beneficiary receives a full scholarship for tuition and required fees, the amount of tuition and required fees that would have been paid under the plan selected may be refunded. Under a junior college plan, junior/senior college plan, or a senior college plan, the amount of such refund shall not exceed the tuition scholarship amount. Refund payments may be issued each academic term as long as the scholarship is effective. The purchaser of the prepaid tuition contract shall be entitled to such refund. Proof of scholarship must be submitted in a form acceptable to the board.~~]

[~~(2) Under the junior college plan, junior/senior college plan or senior college plan, if a beneficiary receives a partial scholarship for tuition and required fees, the tuition scholarship amount may be refunded. Under the private college plan, if a beneficiary receives a partial scholarship, a refund may be made in an amount equal to the excess of the estimated average private tuition and required fee amounts, over the actual tuition and required fee amounts less the scholarship amount. Refund payments up to the amount determined in accordance with this paragraph may be issued each academic term as long as the scholarship is effective. The purchaser of the prepaid tuition contract shall be entitled to such refund. Proof of scholarship must be submitted in a form acceptable to the board.~~]

[~~(3) If the beneficiary dies or becomes disabled while attending an institution of higher education or a private or independent institution of higher education, the amount of benefits remaining available under the prepaid tuition contract, less any applicable fees, may be refunded. A lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board.~~]

[~~(4) If the beneficiary dies or becomes disabled after having graduated from high school but prior to attending an institution of~~

higher education or a private or independent institution of higher education, a refund may be issued or the benefits under such contract may be transferred to another qualified beneficiary. If a change of beneficiary is not requested, a lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board. Under the junior college plan, junior/senior college plan, or senior college plan, the refund will equal the average amount of tuition and required fees in effect at the time the refund is requested. Under the private college plan, the refund will equal the estimated average of private tuition and required fees as determined annually by the board.]

[(5) If the beneficiary dies or becomes disabled before the contract is paid in full, a refund may be issued or the benefits under such contract may be transferred to another qualified beneficiary. If a change of beneficiary is not requested, a lump sum refund may be made within 60 days of the date the program is notified of the death or disability to the purchaser of the prepaid tuition contract, provided proof of death or disability is submitted in a form acceptable to the board. For junior college plans, junior/senior college plans, or senior college plans, the refund amount will be equal to a pro rata amount of the average amount of tuition and required fees in effect at the time the refund is requested, such pro rata amount determined by the number of payments made under the contract by the purchaser to the number of payments required to pay the contract in full. For private college plans, the refund amount will be equal to a pro rata amount of the estimated amount of private tuition and required fees set forth in the prepaid tuition contract, such pro rata amount determined by the number of payments made under the contract by the purchaser to the number of payments required to pay the contract in full.]

[(6) If a prepaid tuition contract is terminated under §7.82(c) of this title (relating to Termination of Prepaid Tuition Contract), such contract may be refunded in an amount equal to the present lump sum actuarial value, as of the date of termination, of the average amount of tuition or the estimated amount of private tuition and required fees of junior college plans, junior/senior college plans or the estimated amount of private tuition and required fees for the private college plan, less a cancellation fee; and any other applicable fee. In no case shall a refund be made in an amount less than the total amount paid by the purchaser under the contract less any applicable administrative fees or amounts previously distributed.]

[(7) If the purchaser who selected the junior college plan, junior/senior college plan, or senior college plan dies or becomes disabled and payments cease before the contract is paid in full, and unless otherwise directed by the purchaser in writing, a refund may be made. The refund amount will be equal to a percentage of the average amount of tuition and required fees in effect at the time the refund is requested, determined by reference to the percentage of payments made under the contract by the purchaser. If the purchaser who selected the private college plan dies or becomes disabled and payments cease before the contract is paid in full, a refund may be made. The refund amount will be equal to a percentage of the estimated amount of private tuition and required fees set forth in the prepaid tuition contract, determined by reference to the percentage of payments made under the contract by the purchaser. A lump sum refund may be made within 60 days to the purchaser of the prepaid tuition contract unless otherwise specified in writing by the purchaser as described in this paragraph. In the alternative, contract benefits may be converted to a plan with reduced benefits. Proof of death or disability shall be in a form acceptable to the board. Notwithstanding any other provision of this paragraph, the purchaser, in a writing to the board, and providing such other information as the board may request, may designate a person who shall have a right of survivorship with respect to purchaser's rights and obligations pursuant to a prepaid tuition contract; provided that such designation shall in no way affect the purchaser's ability to modify or terminate the contract and receive a refund without the consent or authorization of the designee.]

[(8) Refunds may be made for other reasons as approved by the board. By way of example, such refunds may be made in an amount equal to the lowest amount of tuition and required fees of all institutions under the plan selected, less a cancellation fee. Refund payments may be made in semiannual installments to the purchaser of the prepaid tuition contract.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 19, 2009.

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Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 475-0387

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CHAPTER 8. JOBS AND EDUCATION FOR TEXANS (JET) GRANT PROGRAM

The Comptroller of Public Accounts proposes new Chapter 8, concerning Jobs and Education for Texans (JET) Grant Program. New Chapter 8 is necessary to implement House Bill 3 and House Bill 1935, 81st Legislature, 2009, and to better define the role of the comptroller's office and the JET advisory board in implementing these requirements. The new rules will reside under Texas Administrative Code, Title 34, Part 1, Chapter 8, new Subchapter A, §8.1, concerning Definitions; Subchapter B, §§8.11 - 8.14, concerning Advisory Board Composition, Meeting Guidelines; Subchapter C, §§8.21 - 8.25, concerning Grant Programs; Subchapter D, §8.31, concerning Grants to Nonprofit Organizations for Innovative and Successful Programs; Subchapter E, §8.41, concerning Grants to Educational Institutions for Career and Technical Education Programs; and Subchapter F, §8.51, concerning Grants for Scholarships. The Texas State Comptroller's report, "Texas Works: Training and Education for All Texans (2008)" states that Texas faces growing shortages of the skilled workers that help attract and retain business. According to the U.S. Department of Education, 90% of the fastest-growing jobs in the new information and service economy will require some postsecondary education.

These bills establish the JET grant program to counter the shortages by providing grants to public junior colleges, public technical institutes, and eligible nonprofits that foster work force development in emerging industries and high-demand occupations. In addition, the Comptroller of Public Accounts is authorized to award scholarships to public junior college or public technical institute students who demonstrate a financial need and are training for a high-demand occupation.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the proposed new rules would benefit the public by clarifying the comptrollers procedures for implementing the JET program. The proposed amendment would have no fiscal impact on small businesses. There is no anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Linda Fernandez, CFO and Manager, Educational Opportunities and Investment Division, at linda.fernandez@cpa.state.tx.us or at P.O. Box 13528, Austin, Texas 78711.

SUBCHAPTER A. DEFINITIONS

34 TAC §8.1

The new subchapter is authorized under Education Code, §134.008 and Government Code, §403.358, which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The new subchapter implements Education Code, §134.002 and Government Code, §403.352, which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.1. Definitions.

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Act" means Education Code, Chapter 134, as adopted by House Bill 3, 81st Legislature, 2009, and Government Code, Chapter 403, Subchapter O, as adopted by House Bill 1935, 81st Legislature, 2009.

(2) "Advisory board" means the advisory board of education and workforce stakeholders created pursuant to the Act.

(3) "Career and technical education" means organized educational activities that offer a sequence of courses that:

(A) provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in high-demand occupations or emerging industries;

(B) includes competency-based applied learning that contributes to the academic knowledge, problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual; or

(C) provides a license, a certificate, or a postsecondary degree.

(4) "Certificate or degree completion" means receiving a degree, certificate or other award for completion of a curriculum.

(5) "Comptroller" means the Comptroller of Public Accounts.

(6) "Developmental education" means courses, tutorials, laboratories, or other efforts to bring students' skill levels in reading, writing, and mathematics to college entrance level.

(7) "Emerging industry" means a growing, evolving or developing industry based on new technological products or concepts.

(8) "Enrolled" means registered for or in the process of registering for a post-secondary education or training program.

(9) "Financial need" may be determined by proof of:

(A) annual household adjusted income at or below the federal poverty income guidelines;

(B) eligibility for Aid to Families with Dependent Children or other public assistance programs (includes Women, Infants, and Children (WIC) program participants);

(C) eligibility for a Pell Grant or comparable state program of need-based financial assistance;

(D) eligibility for benefits under the Food Stamp Act of 1977 or the Health and Human Services (HHS) Poverty Guidelines; or

(E) eligibility as determined by the Free Application for Federal Student Aid (FAFSA).

(10) "High-demand occupation" means a job, profession, skill, or trade for which employers within the State of Texas generally, or within particular regions or cities of the state, have or will have a substantial need. In determining whether there is or will be a substantial need for a particular job, profession, trade, or skill, the comptroller may consider:

(A) the Texas Workforce Commission's list of high-demand occupations and/or its labor market projections;

(B) whether the occupation has been targeted for Workforce Investment Act (WIA) training as a result of employer or community input; or

(C) research, projections, or workforce data that are compiled by the comptroller or derived from one of the following sources:

(i) the Texas Workforce Commission;

(ii) the United States Department of Labor; or

(iii) another source which provides evidence that a particular job, profession, skill, or trade will provide potential economic benefits to the state or a local or regional area within the state.

(11) "In-kind contribution" means a cash value placed on a non-monetary contribution or investment.

(12) "JET" means the Jobs and Education for Texans Grant Program.

(13) "Low income student" means a student who demonstrates financial need as determined under this section.

(14) "Nonprofit organization" means an organization that is exempt from federal income taxation under Internal Revenue Code of 1986, §501(a), and that is described by §501(c)(3) of that code.

(15) "Notice of Availability" or "NOA" means the notice of availability that is published by the comptroller pursuant to §8.22 of this title (relating to Notice of Grant Availability and Application).

(16) "Persistence rates" means the rate at which students persist in career and technology education courses, often measured by the percentage of students who continue to be enrolled from one year to the succeeding year.

(17) "Prevailing wage" means a wage determination as used by the Texas Workforce Commission for the Skills Development Fund or similar TWC programs or as determined by the comptroller using relevant federal, state and local labor wage data.

(18) "Public junior college" means any junior college certified by the Texas Higher Education Coordinating Board (THECB) in accordance with Education Code, §61.003.

(19) "Public technical institute" means the Lamar Institute of Technology or the Texas State Technical College System in accordance with Education Code, §61.003.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902548
Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

34 TAC §§8.11 - 8.14

The new subchapter is authorized under Education Code, §134.008 and Government Code, §403.358, which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The new subchapter implements Education Code, §134.002 and Government Code, §403.352, which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.11. Advisory Board Purpose and Composition.

(a) The advisory board shall assist the comptroller in administering the Jobs and Education for Texans (JET) Grant Program.

(b) The comptroller is the presiding officer of the board.

§8.12. Meetings Required.

(a) The advisory board is required to meet at least once each quarter to recommend awarding grants to public junior colleges, public technical institutes, and eligible nonprofit organizations.

(b) Meetings may be called at the request of the board's presiding officer.

(c) Meetings shall be subject to the requirements of the Open Meetings Act.

§8.13. General Advisory Board Responsibilities.

The advisory board shall provide advice and recommendations to the comptroller on:

(1) the manner in which public junior colleges, public technical institutes, and eligible nonprofit organizations apply for Jobs and Education for Texans (JET) Grant Program grants; and

(2) the JET grants to be awarded by the comptroller.

§8.14. General Comptroller Responsibilities to the Advisory Board.

The comptroller serves as presiding officer of the board. The presiding officer shall perform all duties and responsibilities imposed by law and in this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. GRANT PROGRAM

34 TAC §§8.21 - 8.25

The new subchapter is authorized under Education Code, §134.008 and Government Code, §403.358, which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The new subchapter implements Education Code, §134.002 and Government Code, §403.352, which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.21. General Statement of Purpose.

In accordance with the Act, the comptroller establishes the Jobs and Education for Texans (JET) Grant Program which shall be administered pursuant to the Act and the rules in this chapter to award grants from the JET fund for the following purposes:

(1) to develop, support, or expand programs of nonprofit organizations that meet the requirements of Education Code, §134.005 and Government Code, §403.355, and that prepare low-income students for careers in high-demand occupations;

(2) for the development of new career and technical education programs at public junior colleges and public technical institutes that meet the requirements of Education Code, §134.006 and Government Code, §403.356; and

(3) to provide scholarships for students in career and technical education programs who meet the requirements of Education Code, §134.007 and Government Code, §403.357.

§8.22. Notice of Grant Availability and Application.

(a) From time to time, the comptroller may publish a Notice of Availability (NOA) of grant funds under this chapter. The notice shall be published in the *Texas Register* and on the comptroller's Web site. In addition to the respective purpose for each grant program under this chapter, the notice may include:

(1) the total grant funds available for award;

(2) the minimum and maximum amount of grant funds available for each grant recipient;

(3) eligibility criteria;

(4) application requirements;

(5) grant award and evaluation criteria;

(6) any grant requirements in addition to those set forth in this chapter;

(7) the date by which the application must be submitted to the comptroller;

(8) the anticipated date of grant awards; and

(9) any other information or instructions necessary and appropriate for awarding the grant as determined by the comptroller.

(b) To be eligible for a grant award, an applicant meeting the eligibility criteria identified in the NOA shall submit an application in the form and manner as prescribed by the comptroller in the NOA.

(c) The comptroller may request additional information at any time prior to grant award in order to effectively evaluate any application.

§8.23. Grant Award and Acceptance.

(a) To award a grant, the comptroller shall provide a grant contract to the grant recipient that shall contain all the terms and conditions for the use of the grant funds.

(b) To receive grant funds, an applicant must execute and return the contract to the comptroller's office.

§8.24. Reporting Requirements.

A public junior college, public technical institute, nonprofit organization or any other entity receiving a grant under this chapter must comply with all reporting requirements of the contract in a frequency and format determined by the comptroller in order to maintain eligibility for grant payments. Failure to comply with the reporting requirements may result in termination of the grant award and the entity being ineligible for future grants under this chapter.

§8.25. Enforcement.

(a) Grant funds must be used in compliance with the terms of the contract for the purposes designated in the contract or will be subject to refund by the grantee, disqualification from receiving further funds under this chapter or any other available legal remedies. If deemed appropriate, the grantee may also be referred to another department or agency including, but not limited to, the Attorney General's Office, the Comptroller's Criminal Investigation Division, or the Comptroller's Internal Audit Department.

(b) The comptroller or the comptroller's designee may audit the use of funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
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SUBCHAPTER D. GRANTS TO NONPROFIT ORGANIZATIONS FOR INNOVATIVE AND SUCCESSFUL PROGRAMS

34 TAC §8.31

The new subchapter is authorized under Education Code, §134.008 and Government Code, §403.358, which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The new subchapter implements Education Code, §134.002 and Government Code, §403.352, which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.31. Grants to Nonprofit Organizations.

(a) This subchapter is applicable to the Jobs and Education for Texans (JET) Grant Program awards to nonprofit organizations to develop, support, or expand programs of nonprofit organizations that meet the requirements of Education Code, §134.005 and Government Code, §403.355, and that prepare low-income students for careers in high-demand occupations.

(b) The nonprofit organization must meet the following criteria to be eligible to receive an award:

(1) provide a program to offer assistance to low-income students in preparing for, applying to, and enrolling in a public junior college or public technical institute;

(2) be governed by a board or other governing structure that includes recognized leaders of broad-based community organizations and members of the local business community;

(3) demonstrate the organization's program has achieved or will achieve success among program participants in the following areas, to the extent applicable to the type of program the organization provides:

(A) above average completion of developmental education among participating public junior college or public technical institute students;

(B) above average persistence rates among participating public junior college or public technical institute students; and

(C) above average certificate or degree completion rates by participating students within a three-year period compared to demographically comparable public junior college and public technical institute students; and

(4) provide matching funds in accordance with the Act and this chapter.

(c) To be eligible to receive a grant under JET, a nonprofit organization must be exempt from federal income taxation under Internal Revenue Code of 1986, §501(a), as an organization described by §501(c)(3) of that code. In its application, the nonprofit organization must provide proof of its federal income taxation exemption in a format determined by the comptroller.

(d) The comptroller shall not award a grant to:

(1) a nonprofit organization to provide a comprehensive educational program to students that serves as a substitute for a regular educational program provided by a school district or open-enrollment charter school;

(2) a private elementary or secondary school; or

(3) a nonprofit organization that provides services to an individual who also receives a scholarship awarded by the comptroller under this chapter.

(e) A grant recipient shall provide the matching funds as identified in its application.

(1) Matching funds may be obtained from any source available to the nonprofit organization, including in-kind contributions, community or foundation grants, individual contributions, and local governmental agency operating funds.

(2) A grant recipient's matching share may consist of one or more of the following contributions:

(A) cash;

(B) in-kind contributions;

(C) equipment, equipment use, materials or supplies;

(D) personnel or curriculum development cost; or

(E) administrative costs that are directly attributable to the project.

(3) The matching funds must be expended on the same project for which the grant funds are provided and valued in a manner acceptable or as determined by the comptroller.

(f) The comptroller may disburse grants to nonprofit organizations in one or more payments.

(g) Grants awarded under this subchapter shall be distributed only upon a showing by the nonprofit organization that the funds awarded will be used for low income current or prospective students age 18 or older who have graduated from high school or obtained a GED and that are preparing for, applying to and enrolling in a public junior college or public technical institute.

(h) Grants awarded under this subchapter shall be awarded in a manner that takes a balanced geographical distribution into account. A balanced geographical distribution shall be determined by the comptroller and notice of balanced geographical distribution considerations shall be provided in the Notice of Availability (NOA).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
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SUBCHAPTER E. GRANTS TO EDUCATIONAL INSTITUTIONS FOR CAREER AND TECHNICAL EDUCATION PROGRAMS

34 TAC §8.41

The new subchapter is authorized under Education Code, §134.008 and Government Code, §403.358, which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The new subchapter implements Education Code, §134.002 and Government Code, §403.352, which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.41. Grants for Career and Technical Education Programs.

(a) This subchapter is applicable to the Jobs and Education for Texans (JET) Grant Program awards to public junior colleges and public technical institutes for the development of career and technical education programs that meet the requirements of Education Code, §134.006 and Government Code, §403.356.

(b) A grant received under this subchapter may be used only:

(1) to support courses or programs that prepare students for career employment in occupations that are identified by local business as being in high demand;

(2) to finance the initial costs of career and technical education courses or program development, including the costs of purchasing equipment, and other expenses associated with the development of an appropriate course; and

(3) to finance a career and technical education course or program that leads to a license, certificate, or postsecondary degree.

(c) In awarding a grant under this subchapter, the comptroller shall primarily consider the potential economic returns to the state from the development of the career and technical education course or program. The comptroller may also consider whether the course or program:

(1) is part of a new, emerging industry or high-demand occupation;

(2) offers new or expanded dual credit career and technical educational opportunities in public high schools; or

(3) is provided in cooperation with other public junior colleges or public technical institutes across existing service areas.

(d) A grant recipient shall provide the matching funds as identified in its application.

(1) Matching funds may be obtained from any source available to the college, including in-kind contributions, industry consortia, community or foundation grants, individual contributions, and local governmental agency operating funds.

(2) A grant recipient's matching share may consist of one or more of the following contributions:

(A) cash;

(B) in-kind contributions or equipment use;

(C) equipment, equipment use, materials or supplies;

(D) personnel or curriculum development cost; or

(E) administrative costs that are directly attributable to the project.

(3) The matching funds must be expended on the same project for which the grant funds are provided and valued in a manner acceptable or as determined by the comptroller.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chief Deputy General Counsel
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SUBCHAPTER F. GRANTS FOR SCHOLARSHIPS

34 TAC §8.51

The new subchapter is authorized under Education Code, §134.008 and Government Code, §403.358, which provides the comptroller the authority to adopt rules as necessary for the administration of the JET program.

The new subchapter implements Education Code, §134.002 and Government Code, §403.352, which requires the comptroller to establish and administer the Jobs and Education for Texans fund as a dedicated account in the general revenue fund.

§8.51. Scholarship Grants.

(a) This subchapter is applicable to the Jobs and Education for Texans (JET) Grant Program awards that provides scholarships for students in career and technical education programs who meet the requirements of Education Code, §134.007 and Government Code, §403.357.

(b) The comptroller may award grants to public junior college and public technical institutes that meet the eligibility criteria as published in a Notice of Availability (NOA). A public junior college or public technical institute that receives a grant under this subchapter shall award scholarships to students who:

(1) demonstrate financial need;

(2) are permanent legal residents of the United States; and

(3) are enrolled or enrolling in a public junior college's or public technical institute's training program for a high-demand occupation as determined by the comptroller.

(c) The comptroller may authorize an eligible public junior college or public technical institute to make the final selection of the scholarship recipient.

(d) Students receiving a scholarship under this subchapter may only use the scholarship funds to pay for tuition and fees, including lab fees and exam or certification fees, for qualifying training programs for high-demand occupations as determined by the comptroller.

(e) The comptroller will publish a list of approved training programs for high-demand occupations on an annual basis or more frequently if necessary.

(f) The comptroller shall not award a scholarship under this subchapter to an individual who also receives assistance from a nonprofit organization that receives a grant under this chapter. A recipient violating this requirement may be prohibited from reapplying for a scholarship under this chapter in subsequent years.

(g) If the public junior college or public technical institute attended by the scholarship recipient determines that the recipient is not complying with the scholarship conditions under this chapter or any subsequent agreements entered into with the recipient, then the recipient's scholarship shall terminate. The public junior college or public technical institute must either refund the amount of the scholarship received, prorated according to the fraction of the semester or academic year not completed, to the comptroller or ensure that the amount is made available to another eligible student who is selected to receive a JET scholarship.

(h) Each public junior college or public technical institute that receives scholarship funding under this chapter must ensure that the scholarship recipient consents to the release of personal and educational information to the comptroller to enable the comptroller to study and compile a report on the effectiveness of the JET program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.21

The Texas Board of Criminal Justice proposes amendments to §163.21, concerning Administration. The proposed amendments are necessary to add clarity and conform to state law.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, is to ensure consistency in the manner in which community supervision and corrections departments are administered across the state.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code §509.003.

Cross Reference to Statutes: Texas Government Code §§76.002, 76.005 and 76.016.

§163.21. Administration.

(a) Appointment and Responsibilities of a Community Supervision and Corrections Department (CSCD or department) [~~CSCD~~] Director.

(1) When there is a vacancy in the position of CSCD director, the judge or judges as described by Texas Government Code §76.002 shall:

(A) Publicly advertise the position;

(B) Post a job description, the qualifications for the position and the application requirements;

(C) Conduct a competitive hiring process and adhere to state and federal equal employment opportunity laws; and

(D) Review applicants who meet the posted qualifications and comply with the application requirements.

(2) The [district] judge or judges as described by Texas Government Code §76.002 shall appoint a CSCD director[,] who shall meet, at a minimum, the [same] eligibility requirements for [criteria as a] community supervision officers (CSOs) established under [officer (CSO) as cited in the] Texas Government Code §76.005[,] and 37 Texas Administrative Code §163.33 [of this title] (relating to CSOs).

(3) The [It is the responsibility of the] CSCD director shall [to apply state, local, and other available resources to] employ a sufficient number of officers and other employees to conduct pre-sentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision and staff community corrections facilities. A person employed under this subsection is an employee of the department and not of the judges or judicial districts. [perform the professional and clerical work of the department as required by law, TDCJ-CJAD standards, and local community corrections needs as identified in the local community justice plan.]

(4) The Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ-CJAD) [TDCJ-CJAD] director shall [is to] be notified by the administrative judge of the appointment of a CSCD director.

(5) The CSCD director shall perform or delegate the responsibility for performing the following duties:

(A) Overseeing the daily operations of the department;

(B) Preparing, annually or biennially, a budget for the department;

(C) Negotiating and entering into contracts on behalf of the department;

(D) Establishing policies and procedures for all functions of the department;

(E) Developing personnel policies and procedures, including disciplinary proceedings; and

(F) Establishing procedures and practices through which the department will address an employment-related grievance.

(b) Administrative Manual. The CSCD director [directors] shall be responsible for developing, updating, revising and maintaining [the development of] an administrative manual that defines the CSCD's [defining] general purposes and functional objectives. The CSCD director shall ensure the administrative manual is available to all staff members and[, incorporating all written policies and procedures, assuring that they are made available to all staff members. The operational section should give a detailed description of the procedures followed in performing the routine tasks of the department. The policies and procedures shall be reviewed by the CSCD director periodically and revised as necessary. The CSCD director shall] provide the TDCJ-CJAD director with a copy of the CSCD's administrative manual for review upon request. The manual shall incorporate all of the written policies and procedures, which shall provide a detailed description of the procedures followed in performing the routine tasks of the department. At a minimum, the [when requested. These] policies and procedures in the manual shall include[, at a minimum]:

(1) Human Resources.

(A) Recruitment [recruitment] procedures;

(B) Promotion requirements [promotional requirement] and procedures;

(C) Equal Employment Opportunity Commission (EEOC) [EEOC]/affirmative action provisions;

(D) Provisions [provisions] of the *Americans [American] with Disabilities Act;*

(E) Provisions [provisions] of the *Fair Labor Standards Act;*

(F) Provisions [provisions] of the *Family Medical Leave Act;*

(G) Sexual [sexual] harassment policy;

(H) Confidentiality [confidentiality] of information;

(I) Organizational [organizational] plan/chart;

(J) Salary [salary] scales;

(K) Benefits [benefits];

(L) Holidays [holidays] and work schedules;

(M) Explanation [explanation] of amount and limitations of leaves;

(N) Personnel [personnel] records;

(O) Employee [employee] performance appraisals;

(P) Disciplinary [disciplinary] procedures;

(Q) Grievance [grievance] procedures;

(R) Probationary [probationary] employment periods;

(S) Contract [contract/temporary] employees;

(T) Dress [dress] code;

(U) Pre-employment [pre-employment] criminal record checks;

(V) Staff [staff] safety;

(W) Political [political] participation;

(X) Travel/mileage [travel/mileage] reimbursement policy; and

(Y) *Immigration Reform and Control Act.*

(2) Medical.

(A) Medical [medical] and psychological records management;

(B) Contagious [contagious] disease policy, including Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) [HIV-AIDS]; and

(C) Tuberculosis [tuberculosis] and other communicable diseases.

(3) Supervision

(A) Supervision description [Description];

(B) Assessment [assessment] and remediation of literacy skills for offenders;

(C) Arrest [arrest] and firearms policy and procedures; and

(D) Pre-sentencing [pre-sentencing] investigation and reporting policy and procedures.

(4) Standards.

(A) Code of ethics;

(B) Training [~~training~~] and staff development;

(C) Job [~~job~~] descriptions, qualifications, and responsibilities;

(D) Insurance [~~insurance~~] and honesty bonds;

(E) Intrastate [~~intrastate~~] and interstate compact policies and procedures;

(F) Case [~~case~~] classification and case management;

(G) Supervision [~~supervision~~] of offenders/continuum of sanctions (policy and procedure);

(H) Internal [~~internal~~] case management audit procedures; and

(I) Violation [~~violation~~] of community supervision [~~probation~~] order procedures.

(c) Ethics. The CSCD director [~~directors~~] shall provide each CSCD employee with a copy of the Code of Ethics adopted by the TDCJ-CJAD and a copy of the procedure developed by the CSCD director that shall [~~to~~] be used to review and investigate an [~~in reviewing and investigating any~~] alleged ethics violation. All employees of the CSCD shall [~~must~~] comply with the Code of Ethics developed by the TDCJ-CJAD.

(d) Internal Audits. Each CSCD [~~CSCDs~~] shall have a designated procedure to monitor the skill levels and training needs of individual staff members and shall develop a plan to meet [~~for meeting~~] those needs. Internal audits of direct supervision cases shall be conducted [~~of direct supervision cases~~] to check for standards compliance, use [~~utilization~~] of case classification[~~,~~] and supervision planning.

(e) Records. The CSCD director [~~directors~~] shall ensure that program records and statistical data consistent with the requirements of the law and TDCJ-CJAD standards are maintained and provided to TDCJ-CJAD as required.

(f) Budget. The CSCD director shall prepare and operate from a budget in a manner consistent with good accounting practices and approved by the judge(s) of their judicial district. The budget shall be submitted to the TDCJ-CJAD director in a format as required and within the provisions as outlined in 37 Texas Administrative Code §163.43 [~~of this title~~] (relating to Funding and Financial Management).

(g) Multi-Department Districts.

(1) Judicial districts composed of more than one (1) county may apply to the TDCJ-CJAD director for authorization to establish more than one (1) CSCD within the judicial district. The application submitted by the judge(s) shall explain how the creation of more than one (1) department will promote:

(A) Administrative [~~administrative~~] convenience;

(B) Economy [~~economy~~]; or

(C) Improved [~~improved~~] community supervision and corrections services[~~,~~] and other reasons, if any.

(2) The application shall indicate the financial impact and the approval of the judges in the judicial district or districts hearing criminal cases affected by the change.

(h) Complaint Notice. Each CSCD shall notify the public, offenders and victims of crimes, that they can direct written complaints to the CSCD and/or TDCJ-CJAD. The notification shall be in the form of a sign posted in a conspicuous public area in each of the CSCD's offices, or shall be in the form of written brochures which are to be displayed in a conspicuous public area in each of the CSCD's offices. Signs and brochures [~~The signs/brochures~~] shall be written in both English and Spanish and shall list the address of the CSCD director and TDCJ-CJAD's address and shall inform persons that attempts should first be made to resolve complaints locally; unsatisfactory results may be reported to the TDCJ-CJAD.

(i) Compliance with [~~With~~] Statutes and TDCJ-CJAD Policy Statements. The CSCD directors shall ensure that all CSCD operations comply with all applicable local, state[~~,~~] and federal laws and the TDCJ-CJAD policy statements and official manuals pertaining to the CSCDs.

(j) Citizen Involvement and Volunteers. If volunteers are used, the CSCD director shall ensure that suitable orientation and supervision is provided in the functions they will be expected to perform. The CSCDs [~~CSCDS~~] are encouraged to establish and maintain opportunities for effective volunteer participation in CSCD operations. If volunteers are used, the CSCD director shall:

(1) Ensure [~~ensure~~] that written policy, procedure[~~,~~] and practice exists for guiding the selection and utilization of citizen involvement; and

(2) Require volunteers to acknowledge and comply with all departmental rules governing the confidentiality of information.

(k) Victim Services. The criminal justice system recognizes the many stakeholders affected by crime and wishes to acknowledge crime victims' interests and right to be informed, heard and protected by the system. With that goal in mind, standards are incorporated to facilitate the participation of crime victims within community supervision.

(1) Training. The CSCD Victim Services Coordinators shall obtain not less than eight (8) [~~8~~] documented hours of professional, skill-based [~~skill based~~] training within the first biennium of appointment to the position of victim service coordinator. Training shall be specific to community supervision and should include:

(A) Victims' rights [~~Victims Rights~~];

(B) Victim sensitivity [~~Sensitivity~~];

(C) Confidentiality issues [~~Issues~~]; and

(D) Crime victim compensation [~~Victims Compensation~~].

(2) Policy and Procedures. Each CSCD shall adopt written policies and procedures regarding victim notification of offenders placed on community supervision and offender information that may be released to victims.[~~:~~]

(A) Notifying the victim of the offender's crime, or if the victim has a guardian or is deceased, notify the guardian of the victim or close relative of the deceased victim, when the offender is released and placed on community supervision. Notification shall include the information specified in Texas Government Code §76.016, which includes: [~~Victim notification of offenders placed on community supervision; and~~]

(i) Notice the offender is being placed on community supervision;

(ii) The conditions of community supervision imposed by the court; and

(iii) The date, time and location of any hearing or proceeding at which the conditions of the offender's community supervision may be modified or the offender's placement on community supervision may be revoked or terminated.

(B) Offender information that is public may be released to victims. Such information includes:

[(3) Notification to victims would include the information specified in Texas Government Code Annotated, Section §76.016:]

[(A) The offender being placed on community supervision;]

[(B) The conditions of community supervision; and]

[(C) The date, time, and location of any hearing or proceeding that would modify the conditions of supervision or the offenders' placement on community supervision.]

[(4) Information that is public record may be released to the victim. This would include:]

(i) [(A)] Court ordered community supervision identifying the department with jurisdiction;

(ii) [(B)] A written copy of the conditions of supervision;

(iii) [(C)] The name of the supervising officer;

(iv) [(D)] Victim service coordinator contact information;

(v) [(E)] Motion to revoke supervision being filed and the results of the motion;

(vi) [(F)] Information regarding the transfer of an offender to another jurisdiction and contact information; and

(vii) [(G)] Information that the offender has been placed in residential confinement and released [release] from confinement, unless such confinement is in a substance abuse treatment facility.

(3) [(5)] Other information that may be released includes [would include] information that the victim would have knowledge of, such as:

(A) Uncollected/unpaid restitution [Restitution not being paid]; and

(B) Sanctions for violating the terms and conditions of supervision. [Additional sanctions for non-compliance of the defendant.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902554
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: August 2, 2009
For further information, please call: (936) 437-6003

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER W. LEVEL-OF-CARE SERVICE SYSTEM

DIVISION 5. INTENSIVE PSYCHIATRIC TRANSITION PROGRAM

40 TAC §700.2383

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.2383, concerning who is eligible for the Intensive Psychiatric Transition Program (IPTP), in its Child Protective Services chapter. The purpose of the amendment is to clarify the eligibility for the IPTP. Specifically, the amendment would extend eligibility for the IPTP from children who have had at least three psychiatric hospitalizations in the preceding 12 months to children who have had at least one prior psychiatric hospitalization in the preceding 12 months, if the child is ready for discharge or at imminent risk of a subsequent hospitalization. To be eligible, the child must also be in need of acute stabilization, as determined by the Assistant Commissioner of Child Protective Services or her designee. Decreasing the number of required psychiatric hospitalizations, while clarifying the target population for the IPTP, will allow more children who critically need this service to be served.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be cost and cost savings to state government as a result of enforcing or administering the section. Additional costs are due to paying the higher IPTP rate of $374.33 a day, instead of the service level rates for the projected client population. The general revenue costs are $3,121,088 for the first year and $3,114,701 for each of the remaining four years. That cost is being offset by a cost savings in the Medicaid funded psychiatric hospitalization program. By serving children who have had only one prior psychiatric hospitalization rather than waiting for three, as in the current IPTP program, there will be a cost savings for the Medicaid program at the Health and Human Services Commission due to the diversion of children from future psychiatric hospitalizations that have a higher cost. It is estimated that the cost savings are $4,121,000 for the first year and $4,186,000 for each of the remaining four years. There is an overall state general revenue cost savings of $999,912 for the first year and $1,071,299 for each remaining year. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that more children can benefit from this type of foster care placement, which will improve their chances of a successful transition into a less restrictive placement and prevent further psychiatric hospitalizations. There will be no effect on large, small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would

otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Christina Guerrero at (512) 438-2405 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-396, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 1, Rider 31, 81st Legislature, Regular Session, 2009.

§700.2383. Who is eligible for the Intensive Psychiatric Transition program?

To be eligible for this program, a child must:

(1) (No change.)

(2) have had at least one [~~three~~] psychiatric hospitalization [~~hospitalizations~~] in the preceding 12 months; [~~and~~]

(3) either be ready for discharge from a psychiatric hospital or at imminent risk of a subsequent [~~fourth~~] psychiatric hospitalization; and [~~.~~]

(4) have been determined by the Assistant Commissioner of CPS or the Assistant Commissioner's designee to be in crisis and in need of acute stabilization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 17, 2009.

TRD-200902470
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 438-3437

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 800, relating to General Administration:

Subchapter B. Allocations, §§800.74 - 800.77

The Commission proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.2

Subchapter B. Allocations, §§800.54, 800.58, and 800.71

The Commission proposes the repeal of the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.74 and §800.75

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 800 is to provide the Commission with additional flexibility in its review of underlying factors or causes for the underexpenditure of Commission-allocated funds by a Local Workforce Development Board (Board).

Additionally, the Food, Conservation, and Energy Act of 2008, enacted June 18, 2008, changed the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP). The Texas Health and Human Services Commission (HHSC), which administers the federal program, has informed the Agency that effective April 1, 2009, it will change the name of the state food stamp program to SNAP. To align with the federal and state name changes, the Commission also is changing the name of Food Stamp Employment and Training (FSE&T) to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T). Therefore, FSE&T references in this chapter will be changed to be consistent with federal and state revisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2(2), the definition of allocation is clarified to ensure consistency with:

--Texas Labor Code §302.062, which specifies that Commission block grant allocations are made to local workforce development areas (workforce areas); and

--§800.51 of this chapter, which notes that Commission block grant allocations are made to workforce areas.

Section 800.2(10), the definition of FSE&T, is removed and replaced by new §800.16, which reflects the name change from FSE&T to SNAP E&T

Certain paragraphs in this section have been renumbered to reflect additions or deletions.

SUBCHAPTER B. ALLOCATIONS

The Commission proposes the following amendments to Subchapter B:

§800.54. Food Stamp Employment and Training

Section 800.54 changes:

--the section title "Food Stamp Employment and Training" to "Supplemental Nutrition Assistance Program Employment and Training";

--the term "FSE&T" to "SNAP E&T"; and

--the term "food stamps" to "SNAP benefits."

§800.58. Child Care

Section 800.58 changes:

--the term "Food Stamp Employment and Training" to "SNAP E&T";

--the term "aged" to "ages"; and

--the term "food stamp" to "SNAP."

§800.71. General Deobligation and Reallocation Provisions

Section 800.71 changes "Food Stamp" to "Supplemental Nutrition Assistance Program."

§800.74. Deobligation of Funds

Section 800.74 is repealed and consolidated in new §800.74.

§800.74. Midyear Deobligation of Funds

The Commission provides WIA program year funds to Boards for expenditure over a two-year period. New §800.74(a) provides that the Commission may deobligate funds during the program year--or the first year of availability of WIA funds--if a workforce area is not meeting the expenditure thresholds in new §800.74(b) and (c). This information is unchanged from repealed §800.74(b)(1).

New §800.74(a)(1) specifies "midyear" as the end of months five, six, seven, or eight. The rule broadens the Commission's ability to review all relevant information that may be causing an underexpenditure of funds, except as set forth in new §800.74(c), beyond the narrow scope of repealed §800.74(b)(1) and (2). New §800.74(a)(1) affords the Commission greater flexibility to consider individual and unique circumstances in the workforce area.

New §800.74(a)(2) limits the amount that may be deobligated by the Commission to no more than the difference between a Board's actual expenditures and the amount corresponding to the relative proportion of the program year. As the midyear period is specified as the end of months five, six, seven, or eight, this new section removes reference to a three-consecutive-month period as in repealed §800.74(c).

New §800.74(a)(3) retains the exemption from deobligation for an underexpended workforce area that received a supplemental allocation or reallocation of funds from the Commission within the prior 60 days. This information remains unchanged from repealed §800.74(d)(1). However, new §800.74(a)(3) removes the exemption from deobligation for an underexpended workforce area that is achieving a sufficient per participant cost and meeting contracted performance measures, information previously located in repealed §800.74(d)(2).

New §800.74(b)(1) - (8) provides the criteria by which the Commission may deobligate the funds listed at midyear, provisions that are unchanged from repealed §800.74(a)(1).

New §800.74(c) provides the criteria by which the Commission may deobligate Workforce Investment Act (WIA) formula funds at midyear, provisions that are unchanged from repealed §800.74(a)(2)(A).

New §800.74(d)(1) - (4), previously located in repealed §800.74(f)(1) - (4), states that upon request from the Commission, a workforce area subject to deobligation of funds must submit a written justification to the Commission and provide a copy to the Board Chair, detailing the actions the workforce area will take, including:

--expanding services proportionate to available resources;

--projecting service levels and related performance;

--reporting additional obligations; or

--other factors the workforce area wants the Commission to consider.

New §800.74(e), previously located in repealed §800.74(g), states that if this section is found not to comply with federal requirements, or if related federal waivers expire, the Commission is subject to any federal requirements in effect.

§800.75. Reallocation of Funds

Section 800.75 is repealed and set forth as new §800.77.

§800.75. Second-Year WIA Deobligation of Funds §New §800.75 sets forth the Commission's criteria for the deobligation of WIA formula funds during the second year of availability.

New §800.75(a) clarifies that in each month of the second year of WIA funds availability, the Commission may deobligate any unexpended WIA formula funds that exceed 20% of the allocation for each category of WIA formula funds for the program year, information previously located in repealed §800.74(a)(2)(B).

New §800.75(b) limits the Commission's ability to deobligate funds from a workforce area to an amount not to exceed the difference between a workforce area's actual expenditures and the unexpended funds that exceed 20% of the allocation for each category of WIA formula funds for the program year.

New §800.75(c) states that the Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in §800.75(a) if within 60 days prior to the potential deobligation period, a workforce area executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category. This mirrors the provision in new §800.74(a)(3) relating to midyear deobligation of funds.

§800.76. Voluntary Deobligation of Funds

New §800.76 allows Boards to request a voluntary deobligation of funds by submitting a written request to the Commission with a copy to the Board Chair.

§800.77. Reallocation of Funds

New §800.77 pertains to a workforce area's eligibility for reallocated funds, and the factors the Commission may consider when reviewing workforce areas' requests for reallocated funds.

New §800.77(a)(1) - (9) lists the funds that the Commission may reallocate to workforce areas. This information remains unchanged from repealed §800.75(a).

New §800.77(b)(1)(A), (C), (D), and (F) - (H) sets forth the criteria for workforce areas' eligibility for child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds) and the funds listed in

§800.77(a)(2) - (9). This information remains unchanged from repealed §800.75(b)(1)(A) - (G).

New §800.77(b)(1)(B) specifies an additional criterion. The Commission also may consider a workforce area's reported obligations when considering the workforce area's requests for available funds.

New §800.77(b)(1)(E) specifies an additional criterion. The Commission also may consider reallocating funds to workforce areas that have an established plan for working with at least one of the Governor's industry clusters, as detailed in the local Board plan.

New §800.77(c)(1), (3), (5), and (6), previously located in repealed §800.75(a)(1) - (4), provides the criteria that the Commission may consider when modifying a reallocation amount.

New §800.77(c)(2) is an additional criterion. The Commission also may consider the amount available for reallocation versus the total dollar amount of the requests, thus providing the Commission flexibility when considering Boards' reallocation requests.

New §800.77(c)(4) also provides an additional criterion. The Commission may consider the extent to which a workforce area's project supports activities related to the Governor's industry clusters.

New §800.77(d), previously located in repealed §800.75(c), is reworded to mirror new §800.74(e).

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no estimated additional costs to the state government expected as a result of enforcing or administering the rules. We cannot estimate whether there will be an additional cost to local governments (Boards) as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated increases or losses in revenue to the state and to local governments as a result of enforcing or administering the rules.

Enforcing or administering the rules does not have foreseeable implications relating to the cost or revenues of the state or local governments.

There is no probable economic cost to persons required to comply with the rule.

Economic Impact Statement and Regulatory Flexibility Analysis

There is no estimated adverse economic effect on small businesses.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to enhance the accountability of and ensure the appropriate expenditure of public funds allocated to workforce areas for needed services.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 12, 2008. The Commission also conducted a conference call with Board executive directors and Board staff on November 14, 2008, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(2) Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.

(3) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(4) Child Care--Child care services funded through the Commission, which may include services funded under the Child

Care and Development Fund, WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(5) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 *et seq.)* to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(6) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(7) Formal Measures--Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Workforce Investment Council (TWIC).

(8) Employment Service [~~Services~~]--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (The Wagner-Peyser Act of 1933 (Title 29 U.S.C. [~~USC~~], Chapter 4B) as amended by the Workforce Investment Act of 1998 (P.L. 105-220)[.])

(9) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

[~~(10) Food Stamp Employment and Training (FSE&T) Activities--A program to assist food stamp recipients to become self-supporting through participation in activities which include employment, job readiness, education, and training. The activities authorized and engaged in as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.~~]

(10) [~~(11)~~] Local Workforce Development Area (workforce area)--Workforce areas designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A. [~~USCA~~], §2831 and §2939).

(11) [~~(12)~~] One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.

(12) [~~(13)~~] Performance Measure--An expected performance outcome or result.

(13) [~~(14)~~] Performance Standard--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures.

(14) [~~(15)~~] Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: October 1 - September 30;

(B) Choices: October 1 - September 30;

(C) Employment Service [~~Services~~]: October 1 - September 30;

(D) Supplemental Nutrition Assistance Program [~~Food Stamp~~] Employment and Training: October 1 - September 30;

(E) Project RIO: October 1 - September 30;

(F) Trade Act Services:[~~;~~] October 1 - September 30;

(G) Veterans' Employment and Training: October 1 - September 30;

(H) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;

(I) WIA Alternative Funding for Statewide Activities: October 1 - September 30; and

(J) WIA Alternative Funding for One-Stop Enhancements: October 1 - September 30.

(15) [~~(16)~~] Project Reintegration of Offenders (RIO)--A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Youth Commission incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306, Texas Government Code §2308.312, and the Memorandum of Understanding with the Texas Department of Criminal Justice and the Texas Youth Commission.

(16) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.

(17) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et seq.)* and the Temporary Assistance for Needy Families statutes and regulations (42 U.S.C.A. §601 *et seq,* 45 C.F.R. Parts 260 - 265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.

(18) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 C.F.R. [~~CFR~~] Part 617) providing services to dislocated workers eligible for Trade benefits through Texas Workforce Centers [~~workforce centers~~].

(19) TWIC--Texas Workforce Investment Council appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code §§2308.101 - 2308.105. Formerly known as the Texas Council on Workforce and Economic Competitiveness (TCWEC), any references to TCWEC when used in this part are now considered references to TWIC.

(20) Texas Workforce Center Partner--An entity that [~~which~~] carries out a workforce investment, educational, or other human resources program or activity, and that [~~which~~] participates in the operation of the One-Stop Service Delivery Network in a [~~local~~] workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

(21) Veterans' Employment and Training--Services established under the Jobs for Veterans Act of 2002 (P.L. 107-288 [~~Public Law 107-288~~], 38 U.S.C.A. §§4100, 4201, and 4301 [~~§4100, 4201, and 4301~~]) the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) program to provide employment services to disabled veterans, veterans of the Vietnam era, and other eligible veterans and family members.

(22) WIA--Workforce Investment Act[~~,~~] (P.L. 105-220 29 U.S.C.A. §2801 *et seq.).* [~~Public Law 105-220 29 U.S.C.A. §2801 et seq.~~] References to WIA include references to WIA formula allocated funds unless specifically stated otherwise.

(23) WIA Formula Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and Governor's reserve funds and rapid response funds).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2009.

TRD-200902438
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 475-0829

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SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.54, 800.58, 800.71, 800.74 - 800.77

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.54. Supplemental Nutrition Assistance Program [~~Food Stamp~~] Employment and Training.

(a) Funds available to the Commission to provide SNAP E&T [~~Food Stamp Employment and Training (FSE&T)~~] services under 7 U.S.C.A. §2015(d) will be allocated to the workforce areas using a need-based formula, as set forth in subsection (b) of this section.

(b) At least 80% of the SNAP E&T [~~FSE&T~~] funds will be allocated to the workforce areas on the basis of:

(1) of the relative proportion of the total unduplicated number of mandatory work registrants receiving SNAP benefits [~~food stamps~~] residing within the workforce area during the most recent calendar year to the statewide total unduplicated number of mandatory work registrants receiving SNAP benefits [~~food stamps~~];

(2) an equal base amount; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.58. Child Care.

(a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.

(b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, TANF funds, and other funds designated by the Commission for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:

(1) 50% will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old, and

(2) 50% will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100% of the poverty level to the statewide total number of people whose income does not exceed 100% of the poverty level.

(c) CCDF [~~Child Care and Development Fund (CCDF)~~] Matching Funds authorized under the Social Security Act §418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.

(d) CCDF [~~Child Care and Development Fund (CCDF)~~] Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 §658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level.

(e) If SNAP E&T [~~Food Stamp Employment and Training~~] child care funding is determined to be available, then funds will be allocated among workforce areas on the basis of the relative proportion of the total number of children ages [~~aged~~] 6 - 12 years in households of mandatory SNAP [~~food stamp~~] work registrants residing within the workforce area to the statewide total number of children ages [~~aged~~] 6 - 12 years in households of mandatory SNAP [~~food stamp~~] work registrants.

(f) The following provisions apply to the funds allocated in subsections (b) - (e) of this section:

(1) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.

(2) Children eligible for Transitional [~~clients~~] and Choices child care shall be served on a priority basis to enable parents to participate in work, education, or training activities.

(3) No more than 5% of the total expenditure of funds may be used for administrative expenditures as defined in federal regulations contained in 45 Code of Federal Regulations §98.52, as may be amended unless the total expenditures for a workforce area are less

than $5,000,000. If a workforce area has total expenditures of less than $5,000,000, then no more than $250,000 may be used for administrative expenditures.

(4) Each Board shall set the amount of the total expenditure of funds to be used for quality activities consistent with federal and state statutes and regulations.

(5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.

(6) Allocations of child care funds will include applications of hold harmless/stop gain procedures.

§800.71. General Deobligation and Reallocation Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) Scope. Sections 800.71 - 800.77 [~~Sections 800.71 - 800.75~~] of this subchapter [~~chapter~~] shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:

(1) Child Care[~~;~~]

(2) Choices[~~;~~]

(3) Employment Service [~~Services;~~]

(4) SNAP E&T [~~Food Stamp Employment and Training;~~]

(5) Project RIO[~~;~~]

(6) Trade Act Services[~~;~~]

(7) WIA Formula Allocated Funds[~~;~~]

(8) WIA Alternative Funding for Statewide Activities[~~; and~~]

(9) WIA Alternative Funding for One-Stop Enhancements[~~.~~]

§800.74. Midyear Deobligation of Funds.

(a) The Commission may deobligate funds from a workforce area during the program year if a workforce area is not meeting the expenditure thresholds set forth in subsections (b) and (c) of this section.

(1) Workforce areas that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (e) of this section.

(2) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount corresponding to the relative proportion of the program year.

(3) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsections (b) and (c) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

(b) The Commission may deobligate the following funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to 90% or more of the relative proportion of the program year:

(1) Child care (with the exception of unmatched federal child care funds that are contingent upon a workforce area securing local funds, as set forth in §800.73 of this subchapter)

(2) Choices

(3) Employment Service

(4) SNAP E&T

(5) Project RIO

(6) Trade Act Services

(7) WIA Alternative Funding for Statewide Activities

(8) WIA Alternative Funding for One-Stop Enhancements

(c) The Commission may deobligate WIA formula funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to 80% or more of the relative proportion of the program year for each category of WIA formula funds.

(d) A workforce area subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification with a copy to the Board Chair. The written justification shall provide sufficient detail regarding the actions a workforce area will take to address its deficiencies, including:

(1) expansion of services proportionate to the available resources;

(2) projected service levels and related performance;

(3) reporting outstanding obligations; and

(4) any other factors a workforce area would like the Commission to consider.

(e) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

§800.75. Second-Year WIA Deobligation of Funds.

(a) In each month of the second year in which the WIA formula funds are available, the Commission may deobligate funds if a workforce area's unexpended WIA formula funds exceed 20% of the allocation for each category of WIA formula funds for the program year.

(b) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount of unexpended funds that exceed 20% of the allocation for each category of WIA formula funds for the program year.

(c) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsection (a) of this section if within 60 days prior to the potential deobligation period, the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

§800.76. Voluntary Deobligation of Funds.

To request a voluntary deobligation of funds allocated to the workforce area, a workforce area's executive director shall submit a written request to the Commission with a copy to the Board Chair.

§800.77. Reallocation of Funds.

(a) Reallocation. A workforce area may be eligible for reallocation of the following funds allocated by the Commission:

(1) Child care (including unmatched federal child care funds that are contingent upon a workforce area securing local funds)

(2) Choices

(3) Employment Service

(4) SNAP E&T

(5) Project RIO

(6) Trade Act Services

(7) WIA Formula Funds

(8) WIA Alternative Funding for Statewide Activities

(9) WIA Alternative Funding for One-Stop Enhancements

(b) Eligibility.

(1) For a workforce area to be eligible for a reallocation of child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds), and the funds set forth in subsection (a)(2) - (9) of this section, the Commission may consider whether a workforce area:

(A) has met targeted expenditure levels as required by §800.74(a) of this subchapter, as applicable, for that period;

(B) has not expended or obligated more than 100% of the workforce area's allocation for the category of funding;

(C) has demonstrated that expenditures conform to cost category limits for funding;

(D) has demonstrated the need for and ability to use additional funds;

(E) has an established plan for working with at least one of the Governor's industry clusters, as specified in the local Board plan;

(F) is current on expenditure reporting;

(G) is current with all single audit requirements; and

(H) is not under sanction.

(2) For a workforce area to be eligible for a reallocation of unmatched federal child care funds that are contingent upon a workforce area securing local funds, the Commission may consider:

(A) whether a workforce area has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter; and

(B) the applicable factors listed in paragraph (1) of this subsection, including factors in paragraph (1)(B) - (H) of this subsection.

(c) The Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter, and may modify the amount to be reallocated by considering the following:

(1) the amount specified in a workforce area's written request for additional funds;

(2) the amount available for reallocation versus the total dollar amount of requests;

(3) the demonstrated ability of a workforce area to effectively expend funds to address the need for services in the workforce area;

(4) the extent to which the project supports activities related to the Governor's industry clusters;

(5) the workforce area's performance during the current and prior program year; and

(6) related factors, as necessary, to ensure that funds are fully used.

(d) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2009.

TRD-200902439
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 475-0829

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40 TAC §800.74, §800.75

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The rules are repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repealed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.74. Deobligation of Funds.

§800.75. Reallocation of Funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 16, 2009.

TRD-200902440
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: August 2, 2009
For further information, please call: (512) 475-0829

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

SUBCHAPTER D. JUDGES

1 TAC §155.157

The State Office of Administrative Hearings (SOAH) adopts an amendment to Subchapter D, Judges, §155.157, concerning Sanctioning Authority. Section 155.157 is adopted without changes to the proposed text as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2732) and will not be republished. The amendment is adopted to clarify subsection (a) paragraph (1). Specifically, SOAH deleted subparagraphs (D) and (E) of paragraph (1) and inserted the wording deleted from those subparagraphs into two new paragraphs, (2) and (3), in subsection (a).

The adopted amendment is necessary because in the prior language, the rule described a separate basis for sanctions instead of describing an improper motion as intended by paragraph (1).

No comments were received during the 30-day comment period.

The amendment is adopted under Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings, Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, and §2003.050, which requires SOAH to adopt rules governing the procedures, including discovery procedures, that relate to a hearing conducted by SOAH.

The adopted amendment affects Government Codes, Chapters 2001 and 2003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902473
Kerry D. Sullivan
General Counsel
State Office of Administrative Hearings
Effective date: July 8, 2009
Proposal publication date: May 8, 2009
For further information, please call: (512) 475-4931

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

DIVISION 1. GENERAL PROVISIONS

4 TAC §7.114

The Texas Department of Agriculture (the department) adopts amendments to Chapter 7, Subchapter H, Division 1, §7.114, concerning regulation of structural pest control, without changes to the proposal published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1505). The amendment is adopted to add a definition for "integrated pest management" and to make grammatical corrections to existing language. Comments were received on the proposal suggesting that the proposed definition of "integrated pest management" needed further clarification due to not adequately encouraging the use of non-chemical strategies to manage pest problems before using a pesticide and that the last sentence of the definition undermines the intent of integrated pest management (IPM) programs in schools. The department believes that the proposed definition is consistent with commonly accepted definitions of integrated pest management and the definition has utility to the employment of integrated pest management approaches to all forms of structural pest control other than schools. Additionally, the requirements in the regulations for IPM programs in schools establishes criteria that programs contain an element for the preferential use of lower risk pesticides and the use of non-chemical strategies to control pests, rodents, insects and weeds. Therefore, the amendments are adopted as proposed.

The amendment adds a definition for "Integrated Pest Management" and renumbers definitions following the new definition accordingly, and makes grammatical corrections to the definition of "Obnoxious and unwanted animals or plants".

The amendment of §7.114 is adopted under Occupations Code, §1951.201, which provides that the department is the sole authority in this state for licensing persons engaged in the business of structural pest control; and §1951.212, which authorizes the department to establish standards for an integrated pest management program for the use of pesticides, herbicides, and other chemical agents to control pests, rodents, insects, and weeds at the school buildings and other facilities of school districts and by rule shall establish categories of pesticides that a school district is allowed to apply.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2009.

TRD-200902465
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: July 7, 2009
Proposal publication date: March 6, 2009
For further information, please call: (512) 463-4075

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DIVISION 2. LICENSES

4 TAC §7.135

The Texas Department of Agriculture (the department) adopts amendments to Chapter 7, Subchapter H, Division 2, §7.135, concerning regulation of structural pest control, without changes to the proposal published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1506). The amendment is adopted to correct an error that occurred in the adoption of §7.135(k), included in the department's adoption of amendments to Subchapter H, Division 2, in the December 4, 2008, issue of the *Texas Register* (33 TexReg 9974). The amendment restores subsection (k)(1) - (4), relating to information that a sponsor must include in a certificate of completion of a continuing education course taken for purposes of meeting license requirements for structural pest control applicators. These paragraphs were inadvertently omitted in the departments adoption submission.

No comments were received on the proposed amendment.

The amendment to §7.135 is adopted under Occupations Code (Code), §1951.201, which provides that the department is the sole authority in this state for licensing persons engaged in the business of structural pest control; the Code §1951.203, which provides that the department shall develop standards and criteria for issuing licenses to individual technicians, businesses, certified commercial applicators and certified noncommercial applicator's conducting structural pest control activities; and §1951.315, which provides the department to establish by rule continuing education requirements for licensees.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2009.

TRD-200902466
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: July 7, 2009
Proposal publication date: March 6, 2009
For further information, please call: (512) 463-4075

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DIVISION 3. COMPLIANCE AND ENFORCEMENT

The Texas Department of Agriculture (the department) adopts the repeal of Chapter 7, Subchapter H, Division 3, §7.150 and new §7.150, and amendments to §7.153 and §7.155, concerning regulation of structural pest control in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1506). Section 7.150 is adopted with changes to subsections (c) and (d). Section 7.153 and §7.155 are adopted without changes and will not be republished. Section 7.150 is repealed in its entirety to allow the department to adopt a new §7.150 to specify requirements for school districts to follow in implementing an integrated pest management (IPM) program as provided by House Bill 2458 (HB 2458), 80th Regular Legislative Session, 2007. New §7.150 is adopted to provide for continuing education and training requirements for newly appointed integrated pest management coordinators employed by school districts. This section also provides for the responsibility of school districts to adopt an IPM program, sets forth the elements that an IPM program shall contain, provides for the appointment and notification to the department of IPM coordinators, describes the responsibilities of the IPM coordinator and certified applicators and licensed technicians, and establishes categories of pesticides that are allowed to be used in school buildings and other facilities of school districts, provides for the approval for use requirement of each category and specifies the application restrictions associated with each category.

Amendments to §7.153 are adopted to replace references to the Board with the department and to correct cites to other sections of the rule that were changed with the transfer of the rules from the abolished Structural Pest Control Board to the department by HB 2458. The amendments are also adopted to specify that a pest control business that qualifies to use the reduced impact pest control service may use the consumer information sheet designed for that service and that the consumer information sheet may be obtained from the department and through the department's website. The amendments to §7.155 are adopted to make requirements for school districts in this section consistent with those adopted in new §7.150.

No comments were received on the proposed changes to §7.153 and §7.155. Many comments were received on §7.150 from the public and stakeholders. Comments generally suggest that school IPM programs include the management of pests in school buildings as well as on school grounds. The department believes that the adopted rules accomplishes this by establishing the standards for an IPM program for the use of pesticides to control pests, rodents, insects and weeds at school buildings and other facilities of school districts consistent with HB 2458.

Comments were received on §7.150(a)(4) suggesting that notification based registries are a less effective means of notifying people because of their limited scope and requiring that individuals place themselves on registries affords only those who already know toxic exposure the opportunity to be informed about pesticide use in school. The comments further suggested that prior notification should be made 72 hours in advance of applications to ensure that the information has been received, to get further information regarding the pesticide and to make arrangements to avoid exposure. The department believes that the regulation provides a reasonable and adequate mechanism to allow a school district to develop procedures to provide prior notification to individuals who request to be notified of pesticide applications and allows latitude for the format that the prior notification may be provided to the individual. School districts have the capability to develop procedures that will best fit the needs of individuals and students based on the individual needs of the

school district and the requesting parties. Therefore, this subsection is adopted as proposed.

One comment was received on §7.150(b)(2) stating that the continuing education requirements for IPM Coordinators is insufficient to protect the public given the toxicity of pesticides used and rapidly changing technology and should be increased from the proposed six hours every three years. The department believes that continuing education is vital to enhance the knowledge of pesticide users but the proposed language is consistent with the requirements of HB 2458. Therefore, this subsection is adopted as proposed.

One comment was received on §7.150(c)(5) recommending that the time period for forwarding pesticide use records to the IPM Coordinator be revised to allow the pesticide use records to be mailed within two weeks instead of 48 hours to reduce the administrative burden to pest control operators in supplying the information by allowing the use records to be forwarded in batches rather than individually for each application. The department agrees with the comment in that more flexibility may be needed, but that a two-week period is not warranted. The department adopts the proposed language with change to allow the records to be provided within two business days or in a time frame as agreed to by the IPM Coordinator.

Comments were received on §7.150(d)(1) stating that posting inside the school does little to inform parents of upcoming pesticide application and suggested adding the words "in an area of common access". The department agrees with the comment that further clarification is warranted and adopts the proposed section with change to specify that posting must conform with §7.148 of the regulations which requires that pest control sign must be posted in an area of common access at least 48 hours prior to each planned treatment.

Comments were received on §7.150(d)(2) stating that posted notification signs should remain posted for 72 hours because of residues remaining after an application. The department believes that a 72-hour period for signs to remain posted for all applications is unnecessary, and that the application restrictions and reentry intervals required based on the pesticide category of the pesticide applied is sufficient to ensure any residue remaining after the application should not pose an unreasonable risk. One comment was received on §7.150(d)(5) stating that this subsection does not adequately protect children from exposure to the toxic volatilization products of many commonly used herbicides and insecticides. The comment suggested adding the words "and potentially harmful volatilization products" after the words "spray particles". The department believes that the proposed language addresses the concern of the comment by not allowing pesticide applications to be made when potential drift would expose students through either physical drift or volatility. Comments were received on §7.150(d)(6) stating that the rule should explicitly state that pesticides may be used only as a last resort after non-chemical methods of pest control are found to be unreasonable and have been exhausted, and then may the least toxic pesticide be used. The department believes the essential elements that are contained and included in an IPM program such as written guidelines that identify thresholds for when pest control actions are justified and the preferential use of lower risk pesticides as well as the use of non-chemical strategies to control pests accomplishes the substance of the comment. Subsection (d)(2) and (5) are adopted as proposed.

Comments were received on §7.150(d)(6)(A) stating that insect and rodent baits in tamper-resistant containers, or for crack and crevice use, should specify only the use of non-volatile pesticides. Comments also stated that Green Category Pesticides should explicitly prohibit chemical ingredients that are carcinogens, mutagens, teratogens, reproductive toxins, developmental neurotoxins, endocrine disruptors, or immune system toxins. One comment was received stating that the Green Category is far too restrictive in excluding Toxicity Category IV products that have been evaluated and classified as reduced risk by the U.S. Environmental Protection Agency (EPA). The department believes specifying only the use of non-volatile pesticides in tamper-resistant containers or for crack and crevice use is unwarranted in that most pesticides used in these methods do not contain active ingredients that would be volatile. The department also believes that active ingredients that may be suspected of being carcinogens, mutagens, teratogens, reproductive toxins, developmental neurotoxins, endocrine disruptors or immune system toxins would have label restrictions or use classifications that would render the product to not meet the criteria of a Green Category Pesticide. The department also believes that the criteria for Green Category is not too restrictive and although it would not include Toxicity Category IV products that have been classified as Reduced Risk by EPA, its use would not be prohibited, but would instead fall within the criteria for a Yellow Category Pesticide. Comments were received on §7.150(d)(6)(B) stating that pesticides should not be applied when students or staff are, or likely to be, in the area within 24 hours of the application. Comments also opposed decreasing the reentry interval for Yellow Category Pesticides from 12 hours to 4 hours and that the distance between the application site and students should be increased to a minimum of 50 feet. Comments also recommended prohibiting the use of Yellow Category pesticides for aesthetic purposes. One comment stated that the definition of Yellow Category pesticides is inadequate due to the hazard variation between products in the Yellow Category is too great to be able differentiate between acute toxicity category III products and those in acute toxicity category IV and EPA Reduced Risk pesticides. The comment felt that making the Yellow Category so broad removes the incentive to use toxicity category IV and EPA Reduced Risk products and the addition of an exemption from the prior written approval for EPA Reduced Risk or toxicity category IV pesticides would create an incentive for the use of least hazardous products with the Yellow Category. In lieu of such an exemption, the comment suggested an annual prior approval in place of the proposed six-month/six applications. The department believes that the increased restrictions to post the treated area and to periodically monitor the area to keep students out of the treated areas until the allowed reentry time, coupled with the enhanced requirements contained in the totality of the regulations is sufficient to warrant the reduction of the reentry interval period and the accompanying distance requirements. The department also believes the prohibition of the use of Yellow Category Pesticides for aesthetic purposes would significantly reduce options that school districts would have to control pests on such vegetation and would result in an economic loss to school districts that have invested in vegetation for such purposes. The department also believes that the definition for the Yellow Category Pesticides is not overly broad and does not remove the incentives for school districts too use pesticides that are lower or reduced risk. The criteria for the Yellow Category Pesticides provides guidance for school districts to use in selecting a pesticide that will adequately address their pest issues consistent with their established IPM program. The criteria does not differ significantly from the previous Yellow List criteria that has been used in IPM programs in school districts for years. Comments

were received on §7.150(d)(6)(C) stating that Red Category Pesticides should be prohibited unless non-chemical strategies and Green and Yellow Category Pesticides have been tried and the pest problem is a public health emergency. The comments also stated that pesticides should not be applied when students or staff are, or likely to be, in the area within 24 hours of the application and were opposed to decreasing the reentry interval for Red Category Pesticides from twelve (12) hours to eight (8) hours. The comments also stated that the distance between the application site and students should be increased to a minimum of 100 feet and that students should not be on school grounds or in the school building during an application of a Red Category Pesticide. The comments also stated that the use of Red Category pesticides for aesthetic purposes should be prohibited. The department believes that the increased restrictions to post the treated area and to periodically monitor the area to keep students out of the treated areas until the allowed reentry time, coupled with the enhanced requirements contained in the totality of the regulations is sufficient to warrant the reduction of the reentry interval period and the accompanying distance requirements. The department also believes the prohibition of the use of Red Category Pesticides for aesthetic purposes would significantly reduce options that school districts would have to control pests on such vegetation and would result in an economic loss to school districts that have invested in vegetation for such purposes. Subsection (d)(6) is adopted as proposed.

4 TAC §7.150

The repeal of §7.150 is adopted under Occupations Code, §1951.201, which provides that the department is the sole authority in this state for licensing persons engaged in the business of structural pest control; §1951.212, which authorizes the department to establish standards for an integrated pest management program for the use of pesticides, herbicides, and other chemical agents to control pests, rodents, insects, and weeds at the school buildings and other facilities of school districts and by rule shall establish categories of pesticides that a school district is allowed to apply; and the Texas Government Code, §2001.004, which provides that a state agency shall adopt rules of practice stating the nature and requirements of all available formal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2009.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: July 7, 2009
Proposal publication date: March 6, 2009
For further information, please call: (512) 463-4075

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4 TAC §§7.150, 7.153, 7.155

The new section and amendments are adopted under Occupations Code, §1951.201, which provides that the department is the sole authority in this state for licensing persons engaged in the business of structural pest control; §1951.212, which authorizes the department to establish standards for an integrated pest management program for the use of pesticides, herbicides, and other chemical agents to control pests, rodents, insects, and weeds at the school buildings and other facilities of school districts and by rule shall establish categories of pesticides that a school district is allowed to apply; and the Texas Government Code, §2001.004, which provides that a state agency shall adopt rules of practice stating the nature and requirements of all available formal procedures.

§7.150. Integrated Pest Management Program for School Districts.

(a) Responsibility of School Districts to Adopt an IPM Program. Each school district shall establish, implement, and maintain an Integrated Pest Management (IPM) program. An IPM program is a regular set of procedures for preventing and managing pest problems using an integrated pest management strategy, as defined in §7.114 of this title (relating to Definition of Terms). The school district is responsible for the IPM Coordinator(s) compliance with these regulations.

(1) The IPM program shall contain these essential elements:

(A) a school board approved IPM policy, stating the school district's commitment to follow integrated pest management guidelines in all pest control activities that take place on school district property. The IPM policy statement shall include:

(i) a definition of IPM consistent with this section;

(ii) a reference to Texas laws and rules governing pesticide use and IPM in public schools;

(iii) information about who can apply pesticides on school district property; and

(iv) information about designating, registering, and required training for the school district's IPM coordinator. The Superintendent and IPM Coordinator will maintain a copy of the policy.

(B) a monitoring program to determine when pests are present and when pest problems are severe enough to justify corrective action;

(C) the preferential use of lower risk pesticides and the use of non-chemical management strategies to control pests, rodents, insects and weeds;

(D) a system for keeping records of facility inspection reports, pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints;

(E) a plan for educating and informing school district employees about their roles in the IPM program; and

(F) written guidelines that identify thresholds for when pest control actions are justified.

(2) Each school district superintendent shall appoint an IPM Coordinator(s) to implement the school district's IPM program. Not later than 90 days after the superintendent designates or replaces an IPM Coordinator(s), the school district must report to the department the newly appointed coordinator's name, address, telephone number, e-mail address and the effective date of the appointment. A school district that appoints more than one IPM Coordinator shall designate a Responsible IPM Coordinator who will have overall responsibility for the IPM program and provides oversight of subordinate IPM Coordinators regarding IPM program decisions.

(3) Each school district that engages in pest control activities must employ or contract with a licensed applicator, who may, if an employee, also serve as the IPM Coordinator(s).

(4) Each school district shall prior to or by the first week of school attendance, ensure that a procedure is in place to provide prior

notification of pesticide applications in accordance with this chapter. Individuals who request in writing to be notified of pesticide applications may be notified by telephonic, written or electronic methods.

(b) Responsibilities of the IPM Coordinator(s). The IPM Coordinator(s) shall be responsible for implementation of the school district IPM Program and district compliance with these rules. In addition, the IPM Coordinator(s) shall:

(1) successfully complete a department-approved IPM Coordinator training course within six months of appointment;

(2) obtain at least six hours of department-approved IPM continuing education units at least every three years, beginning the effective date of this rule or the date of designation, whichever is later. No approved course may be repeated for credit within the same three year period;

(3) oversee and be responsible for:

(A) coordination of pest management personnel, ensuring that all school employees who perform pest control, including those employees authorized to perform incidental use applications, have the necessary training, are equipped with the appropriate personal protective equipment, and have the necessary licenses for their pest management responsibilities;

(B) ensuring that all IPM program records, including incidental use training records (as provided for under §7.155), facility inspection reports, pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints are maintained for a period of two years and are made available to a department inspector upon request;

(C) conducting periodic facility inspections on campus buildings and grounds;

(D) working with district administrators to ensure that all pest control proposal specifications for outside contractors are compatible with IPM principles, and that contractors work under the guidelines of the school district's IPM policy;

(E) ensuring that all pesticides used on school district property are in compliance with the school district's IPM program and that current pesticide labels and Material Safety Data Sheets (MSDS) are available for interested individuals upon request;

(F) overseeing and implementing that portion of the plan that ensures that school district administrators and relevant school district personnel are provided opportunities to be informed and educated about their roles in the IPM program, reporting, and notification procedures;

(G) pesticide applications, including the approval of emergency applications at buildings and on school district grounds, are conducted in accordance with these rules;

(H) maintaining a current copy of the school district's IPM policy and making available to a department inspector upon request.

(c) Responsibilities of Certified Applicators and Licensed Technicians. The commercial or noncommercial certified applicator or licensed technician shall:

(1) apply only EPA labeled pesticides, appropriate for the target pest, except as provided in these rules;

(2) provide the structural pest management needs of the school district by following the school district's IPM program and these regulations;

(3) obtain written approval from the IPM Coordinator(s) for the use of pesticides in accordance with these rules;

(4) handle and forward to the IPM Coordinator(s) records of IPM activities, any complaints relating to pest problems, and pesticide use;

(5) ensure that pesticide use records are forwarded to the IPM Coordinator within two (2) business days or in a time frame as agreed to by the IPM Coordinator;

(6) consult with the IPM Coordinator(s) concerning the use of control measures in buildings and grounds; and

(7) ensure that all pest control activities are consistent with the school district's IPM program and IPM policy.

(d) Pesticide Use In School Districts. All pesticides used by school districts must be registered with the United States Environmental Protection Agency (EPA) and the Texas Department of Agriculture, with the exception of those pesticides that have been exempted from registration by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 25(b). All pesticides used by school districts must also bear a label as required by FIFRA and Chapter 76 of the Texas Agriculture Code. Pesticide use must also meet the following requirements.

(1) Pest control signs shall be posted at least 48 hours prior to a pesticide application inside school district buildings as provided for under §7.148 of this title (relating to Responsibilities of Unlicensed Persons for Posting and Notification).

(2) For outdoor applications made on school district grounds, a pest control sign shall be displayed at the time of application and will remain posted until the specified reentry interval has been met in accordance with these rules.

(3) Pesticides used on school district property shall be mixed outside of student occupied areas of building and grounds.

(4) The use of non-pesticide control measures, non-pesticide monitoring tools and mechanical devices, such as glue boards and traps as permitted in accordance with these rules, are exempt from posting requirements.

(5) Pesticide applications shall not be made to outdoor school grounds if such an application will expose students to physical drift of pesticide spray particles. Reasonable preventative measures shall be taken to avoid the potential of drift to occur.

(6) School districts are allowed to apply the following pesticides to control pests, rodents, insects and weeds at school buildings, grounds or other facilities in accordance with the approval for use and restrictions listed for each category:

(A) Green Category Pesticides.

(i) Definition: A pesticide will be designated as a Green Category pesticide if it meets the following criteria:

(I) all active ingredients belonging to EPA toxicity categories III and IV;

(II) it contains a CAUTION signal word on the product label, unless no signal word is required to appear on the product label as determined by EPA; and

(III) it consists of the active ingredient boric acid; disodium octoborate tetrahydrate or related boron compounds; silica gel; diatomaceous earth; or belongs to the class of pesticides that are insect growth regulators; microbe-based insecticides; botanical insecticides containing no more than 5% synergist (and does not include

synthetic pyrethroids); biological (living) control agents; pesticidal soaps; natural or synthetic horticultural oils; or insect and rodent baits in tamper-resistant containers, or for crack-and-crevice use only;

(ii) Approval for Use: Green Category pesticides do not require prior written approval. These pesticides may be applied at the licensee's discretion under the guidelines of the school district IPM program.

(iii) Restrictions:

(I) Green Category pesticides may be applied indoors if students are not present and are not expected to be present in the room or treated area at the time of application. Reentry into the treated area is permitted as soon as the application is complete, the pesticide spray has dried, or the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Green Category pesticides may be applied outdoors if students are not present within ten (10) feet of the application site at the time of treatment. Students are allowed reentry into the treated area as soon as the application is complete, the pesticide spray has dried or the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(B) Yellow Category Pesticides.

(i) Definition: A pesticide will be designated as a Yellow Category pesticide if it meets the following criteria:

(I) all active ingredients belonging to EPA toxicity categories III and IV;

(II) it contains a CAUTION signal word on the product label, unless no signal word is required to appear on the product label as determined by EPA; and

(III) it does not meet the criteria to be designated as a Green Category pesticide under subparagraph (A)(i) of this paragraph.

(ii) Approval for Use: Yellow Category pesticides require written approval from the certified applicator prior to their use. Yellow Category pesticide approvals shall have a duration of no longer than six (6) months or six (6) applications per site, whichever occurs first.

(iii) Restrictions:

(I) Yellow Category pesticides may be applied indoors if students are not present or not expected to be present in the room or treated area within the next four (4) hours following the application, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Yellow Category pesticides may be applied outdoors if students are not present or not expected to be present within ten (10) feet of application site and the area is secured and reentry is in accordance with these rules for no less than four (4) hours, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(III) The treated area must be clearly posted at all entry points or secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape or periodically monitored to keep students out of the treated area until the allowed reentry time.

(C) Red Category Pesticides.

(i) Definition: A pesticide will be designated as a Red Category Pesticide if it meets the following criteria:

(I) all active ingredients belonging to EPA toxicity category I or II;

(II) it contains a WARNING or DANGER signal word on the product label; and

(III) it contains an active ingredient that has been designated as a restricted use pesticide, a state-limited-use pesticide or a regulated herbicide; and it does not meet the criteria to be designated as a Green Category pesticide under subparagraph (A)(i) of this paragraph, or a Yellow Category pesticide under subparagraph (B)(i) of this paragraph.

(ii) Approval for Use: Prior to the application, licensees must provide written justification to the IPM Coordinator for the use of the red category pesticide and must obtain signed approval for the application from the IPM Coordinator. Red Category pesticide approvals shall have a duration of no longer than three (3) months or three (3) applications per site, whichever occurs first.

(iii) Restrictions.

(I) Red Category pesticides may be applied indoors if students are not present and are not expected to be present in the room or treated area within eight (8) hours following the application, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Red Category pesticides may be applied outdoors if students are not present within twenty five (25) feet of the application site, the area is secured in accordance with these rules, and reentry by students is prohibited for no less than eight (8) hours, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(III) The treated area must be clearly posted at all entry points or secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape or periodically monitored to keep students out of the treated area until the allowed reentry time.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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CHAPTER 15. EGG LAW

4 TAC §15.11

The Texas Department of Agriculture (the department) adopts new §15.11, concerning retail egg replacement, without changes to the proposal as published in the May 1, 2009, issue of the *Texas Register* (34 TexReg 2648).

The new section is adopted in order to provide requirements under which retailers may adopt procedures to replace broken or unsound eggs within a carton. Documentation of employee training on these requirements will be kept at the retail establishment.

New §15.11 also provides that retailers must submit a written plan for replacement to the department and, upon approval, operate under the conditions of a compliance agreement. Due to their fragile nature and perish ability, shell eggs can easily be damaged at any point in the distribution system. Damaged eggs provide an excellent growing environment for harmful bacteria, such as *Salmonella,* which can be associated with raw eggs. Existing rules require the removal from display of cartons containing damaged eggs, but do not specify handling requirements or methods of disposal to ensure sanitary practices. The adopted rule will allow retailers appropriate flexibility to reduce waste, while ensuring safe handling of eggs and maintaining labeling and grading requirements. The new section provides requirements for cartons used for egg replacement, sanitation requirements for egg replacement, and record keeping requirements.

No comments were received on the proposal.

The new section is adopted under the Texas Agriculture Code, §132.044(e), which authorizes the department to provide for the repacking, downgrading, or both repacking and downgrading of eggs by a retailer; §132.003, which authorizes the department to adopt rules as necessary, in the administration of this chapter; and §12.020, which authorizes the department to enforce administrative penalties for violations of Chapter 132.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dolores Alvarado Hibbs
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Texas Department of Agriculture
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CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

4 TAC §§19.410 - 19.413

The Texas Department of Agriculture (the department) adopts the repeal of §§19.410 - 19.413, concerning a quarantine for the Asian Citrus Psyllid, *Diaphorina citri* Kuwayama, without changes to the proposal as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2735).

The Animal and Plant Health Inspection Service (APHIS) agency of the United States Department of Agriculture (USDA) issued a Federal Order on November 2, 2007, titled "Expansion of the quarantines for citrus greening and Asian citrus psyllids," which quarantined 32 Texas counties for this psyllid insect pest. The Federal Order required the department to establish a parallel quarantine by December 1, 2007; otherwise APHIS cautioned it would quarantine the entire state of Texas to prevent the spread of the psyllid to other states. To avoid APHIS' statewide quarantine, the department quarantined 32 counties on an emergency basis on November 29, 2007, as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9185). Later, the department published a proposed rule to quarantine these 32 counties in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1475) and adopted the proposal on April 4, 2008 effective on April 24, 2008 as published in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3260).

As the psyllid survey continued, the insects were found in four additional counties, which were added to §19.411 and §19.413 of the quarantine on an emergency basis on August 27, 2008, as published in the September 12, 2008, issue of the *Texas Register* (33 TexReg 7653). However, the department withdrew this emergency amendment to §19.411 and §19.413 on November 5, 2008, as published in the November 21, 2008, issue of the *Texas Register* (33 TexReg 9449). Moreover, APHIS issued a federal order on January 28, 2009, which quarantined the entire state of Texas for the psyllid, and consequently rendered the department's Asian Citrus Psyllid quarantine obsolete. Consequently, the department repealed §§19.410 - 19.413 on January 30, 2009, via an emergency rule, which was published in the *Texas Register* on February 13, 2009 (34 TexReg 911). The emergency repeal was renewed for a 45-day period in the June 5, 2009, issue of the *Texas Register* (34 TexReg 3457) and will expire on July 13, 2009. A proposed rule, which was identical to the emergency rule concerning repeal of §§19.140 - 19.413, was published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2735).

No comments were received regarding the repeal of §§19.410 - 19.413 during the 30-day comment period.

The repeal of §§19.410 - 19.413 is adopted under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines that the pest is dangerous and is not widely distributed in this state; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to prevent the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area; or provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dolores Alvarado Hibbs
General Counsel
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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER B. ORGANIZATION PROCEDURES

7 TAC §91.208

The Credit Union Commission (Commission) adopts new §91.208, concerning Notice of Known or Suspected Criminal Violations, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1319). The new rule carves out from existing §91.209 the requirement that a credit union notify the Department of any known or suspected criminal violation. The separate rule makes the requirement more visible to credit unions, spells out in greater detail the method for reporting and the types of violations that must be reported to the Department, and clarifies when a credit union may submit a Suspicious Activity Report to fulfill the reporting requirement.

The new rule is adopted to clarify regulatory requirements.

The Commission received no comments with respect to this new rule. A public hearing on the new rule was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.403, which directs the commissioner to supervise and regulate credit unions.

The specific section affected by the new rule is Texas Finance Code, §15.403.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200902518
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: July 12, 2009
Proposal publication date: February 27, 2009
For further information, please call: (512) 837-9236

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7 TAC §91.209

The Credit Union Commission (Commission) adopts an amendment to §91.209, concerning reports and charges for late filing, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1319). The amendment deletes subsection (b) which has been moved to and expanded in new rule §91.208.

The amendment is adopted as a result of the Commission adopting new rule §91.208.

The Commission received no comments with respect to this rule amendment. A public hearing on the amendment was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendment is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.403 which directs the commissioner to supervise and regulate credit unions.

The specific section affected by the rule is Texas Finance Code, §15.403.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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Proposal publication date: February 27, 2009
For further information, please call: (512) 837-9236

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SUBCHAPTER H. INVESTMENTS

7 TAC §91.802

The Credit Union Commission (Commission) adopts amendments to §91.802, concerning other investments, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1320). The amendments correct a conflict with §91.803, which prohibits a credit union from investing in commercial mortgage related securities.

The amendments are adopted to resolve conflicting regulatory guidance.

The Commission received no comments with respect to these amendments. A public hearing on the amendments was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §124.351 which sets out permitted investments.

The specific section affected by the amended rule is Texas Finance Code, §124.351.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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SUBCHAPTER Q. ACCESS TO CONFIDENTIAL INFORMATION

7 TAC §91.8000

The Credit Union Commission (Commission) adopts amendments to §91.8000, concerning discovery of confidential information, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1323). The amendments articulate important policy considerations and provide additional guidance for courts issuing protective orders.

The amendments are adopted as a result of recent experience with the rule.

The Commission received no comments with respect to these amendments. A public hearing on the amendments was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §126.002, concerning confidentiality of information.

The specific section affected by the amended rule is Texas Finance Code, §126.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES
SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §97.101

The Credit Union Commission (Commission) adopts an amendment to §97.101, concerning meetings, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1325). The amendment adds a requirement that the minutes of the meetings of the Commission and its committees be posted on the agency website.

The amendment is adopted as a result of the Department's general rule review.

The Commission received no comments with respect to this rule amendment. A public hearing on the amendment was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendment is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.209 which authorizes the Commission to adopt reasonable rules governing meetings and the form of the minutes.

The specific section affected by the amended rule is Texas Finance Code, §15.209.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §97.102

The Credit Union Commission (Commission) adopts an amendment to §97.102, concerning delegation of duties, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1326). The amendment to §97.102 clarifies the purpose and limits of the delegation of duties to the commissioner.

The amendment is proposed as a result of the Department's general rule review.

The Commission received no comments with respect to this rule amendment. A public hearing on the amendment was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendment is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the amended rule is Texas Finance Code, §15.402.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §97.107

The Credit Union Commission (Commission) adopts amendments to §97.107, concerning related entities, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1326). The amendments expand the definition of a related entity to include a subsidiary or affiliate of a CUSO which is wholly owned or controlled by a credit union, and correct a typographical error.

The amendments are adopted as a result of the Department's general rule review.

The Commission received no comments with respect to these amendments. A public hearing on the amendments was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.4032 which authorizes the Commission to establish rules for the examination of related entities.

The specific section affected by the amended rule is Texas Finance Code, §15.4032.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. FEES

7 TAC §97.113

The Credit Union Commission (Commission) adopts amendments to §97.113, concerning fees and charges, with changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1327). The section is adopted with changes to correct a typographical error in Figure: 7 TAC §97.113(b). The amendments revise the fee structure, clarify the treatment of credit unions exiting the state charter system, increase the supplemental examination fee from $40 per hour to $50 per hour, and revise the method for fee calculation in the event of a merger. The amendments also edit language for consistency and clarity.

The amendments are adopted as a result of the Department's general rule review.

The Commission received no comments with respect to these amendments. A public hearing on the amendments was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under Texas Finance Code, §15.402, which directs the Commission to establish by rule reasonable and necessary fees for the administration of Title 2, Chapter 15 and Subtitle D, Title 3 of the Finance Code.

The specific section affected by the amended rule is Texas Finance Code, §15.402.

§97.113. Fees and Charges.

(a) Remittance of fees.

(1) Each credit union authorized to do business under the Act shall remit to the department an annual operating fee. The fee shall be paid in semi-annual installments, billed effective September 1 and March 1 of each year. The final installment may be adjusted as provided by subsection (d) of this section. Installments received after September 30 or March 30 of each year will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(2) Credit unions that exit the Texas credit union system on or before August 31 or February 28 of a given year, will not be subject to the semi-annual assessment for the period beginning September 1 or March 1, respectively. Only those credit unions leaving the state credit union system prior to the close of business on those dates avoid paying the semi-annual assessment for the period beginning September 1 or March 1, as applicable.

(b) Calculation of operating fees. The schedule provided in this section shall serve as the basis for calculating operating fees. The base date shall be June 30 of the year in which operating fees are calculated. The asset base may be reduced by the amount of reverse-repurchase balances extant on the June 30 base date. The commissioner is authorized to increase the fee schedule once each year as needed to match revenue with appropriations. An increase greater than 5% shall require prior approval of the commission. The commissioner shall notify the commission of any such adjustment at the first meeting of the commission following the determination of the fee schedule.
Figure: 7 TAC §97.113(b)

(c) Waiver of operating fees. The commissioner is authorized to waive the operating fee for an individual credit union when good cause exists. The commissioner shall document the reason(s) for each waiver of operating fees and report such waiver to the commission at its next meeting.

(d) Adjustment of an installment. The commissioner in the exercise of discretion may, after review and consideration of actual revenues to date and projected revenues for the remainder of the fiscal year, lower the amount of the final installment due from credit unions.

(e) Supplemental examination fees.

(1) If the commissioner or deputy commissioner schedules a special examination in addition to the regular examination, the credit union is subject to a supplemental charge to cover the cost of time and expenses incurred in the examination.

(2) The credit union shall pay a supplemental fee of $50 for each hour of time expended on the examination. The commissioner may waive the supplemental fee or reduce the fee, individually or collectively, as he deems appropriate. Such waiver or reduction shall be in writing and signed by the commissioner. The department shall fully explain the time and charges for each special examination to the president or designated official in charge of operations of a credit union.

(f) Foreign credit union branches. Credit unions operating branch offices in Texas as authorized by §91.210 of this title (relating to Foreign Credit Unions) shall pay an annual operating fee of $500 per branch office.

(g) Credit union conversion fee. A credit union organized under the laws of the United States or of another State that converts to

a credit union organized under the laws of this State shall remit to the department an annual operating fee within 30 days after the issuance of a charter by the commissioner. The schedule provided in subsection (b) of this section shall serve as the basis for calculating the operating fee. All provisions set forth in subsection (b) of this section shall apply to converting credit unions with the following exceptions:

(1) Should the effective date of the conversion fall on or after October 31, the base date shall be the calendar quarter end immediately preceding the issuance date of a charter by the commissioner.

(2) The amount of the operating fee calculated under this section will be prorated based upon the number of full months remaining until September 1. For example, should the effective date of the conversion be January 31, the converting credit union will remit seven-twelfths of the amount of the operating fee calculated using December 31 base date.

(3) Any fee received more than 30 days after the issuance of a charter will be subject to a monthly 10% late fee unless waived by the commissioner for good cause.

(h) Mergers/Consolidations. In the event a credit union in existence as of June 30 merges or consolidates with another credit union and the merger/consolidation is completed on or before August 31, the surviving credit union's asset base, for purposes of calculating the operating fee prescribed in subsection (b) of this section, will be increased by the amount of the merging credit union's total assets as of the June 30 base date.

(i) Special assessment. The commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.

(j) Foreign credit union fee for field of membership expansion. A foreign credit union applying to expand its field of membership in Texas shall pay a fee of $200. This fee shall be paid at the time of filing to cover the cost of processing the application. In addition, the applicant shall pay any cost incurred by the department in connection with a hearing conducted at the request of the applicant.

(k) Foreign credit union examination fees.

(1) If the commissioner schedules an examination of a foreign credit union, the credit union is subject to supplemental charges to cover the cost of time and expenses incurred in the examination.

(2) The foreign credit union shall pay a fee of $50 for each hour of time expended by each examiner on the examination. The commissioner may waive the examination fee or reduce the fee as he deems appropriate.

(3) The foreign credit union shall also reimburse the department for actual travel expenses incurred in connection with the examination, including mileage, public transportation, food, and lodging in addition to the fee set forth in paragraph (2) of this subsection. The commissioner may waive this charge at his discretion.

(l) Contract Services. In addition, the commissioner may charge, or otherwise cause to be paid by, a credit union, a foreign credit union or related entities the actual cost incurred by the department for an examination or a review of all or part of the operations or activities of a credit union, a foreign credit union or related entity that is performed under a personal services contract entered into between the department and third parties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §97.114

The Credit Union Commission (Commission) adopts amendments to §97.114, concerning charges for public records, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1328). The amendments update statutory references, including references to the Office of the Attorney General's regulations concerning charges for providing public information. The amendments also delete unnecessary language setting the fees.

The amendments are adopted as a result of the Department's general rule review.

The Commission received no comments with respect to these amendments. A public hearing on the amendments was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the amended rule is Texas Finance Code, §15.402.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. DEPARTMENT OPERATIONS

7 TAC §97.205

The Credit Union Commission (Commission) adopts amendments to §97.205, concerning use of historically underutilized businesses, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1329). The proposed amendments update statutory references.

The amendments are adopted as a result of the Department's general rule review.

The Commission received no comments with respect to these rule amendments. A public hearing on the amendments was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the amended rule is Texas Finance Code, §15.402.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §97.207

The Credit Union Commission (Commission) adopts amendments to §97.207, concerning contracts for professional or personal service, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1330). The proposed amendments update statutory references.

The amendments are adopted as a result of the Department's general rule review.

The Commission received no comments with respect to these rule amendments. A public hearing on the amendments was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendments are adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.414, which directs the commission to adopt rules for soliciting and awarding contracts.

The specific section affected by the amended rule is Texas Finance Code, §15.414.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. GIFTS AND BEQUESTS

7 TAC §97.300

The Credit Union Commission (Commission) adopts an amendment to §97.300, concerning gifts of money or property, without changes to the text published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1331). The amendment makes a grammatical clarification.

The amendment is adopted as a result of the Department's general rule review.

The Commission received no comments with respect to this rule amendment. A public hearing on the amendment was held at the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 on Friday, May 15, 2009 at 9:00 a.m. No comments were received at that hearing.

The amendment is adopted under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code, and under §15.415 which authorizes the Department to accept money or property by gift.

The specific section affected by the amended rule is Texas Finance Code, §15.415.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.1, §255.8

The Office of Rural Community Affairs (Office) adopts the amendments to §255.1 and §255.8, for the Community Devel-

opment Block Grant (CDBG) non-entitlement area funds with changes to the proposed text as published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2431).

The adopted rules modify the appeal of Texas Community Development Block Grant Program actions, §255.1 and the appeal of Regional Review Committee decisions, §255.8. The adopted rules will eliminate any reference to Texas Capital Fund appeals.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under §487.052 of the Government Code, which provides the Board with the authority to adopt rules concerning the implementation of the Office's responsibilities.

§255.1. General Provisions.

(a) Definitions and abbreviations. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Office or to the Texas Department of Agriculture (TDA).

(2) Application--A written request for Texas Community Development Block Grant Program (TxCDBG) funds in the format required by the Office or by the TDA for Texas Capital Fund (TCF) applications.

(3) Community Development Block Grant nonentitlement area funds--The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of l974, Title I, as amended (42 United States Code §§5301 et seq.), and the regulations promulgated thereunder in 24 Code of Federal Regulations Part 570.

(4) Community--A unit of general local government.

(5) Contract--A written agreement, including all amendments thereto, executed by the Office, or by the TDA, and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Office or the TDA has executed a contract.

(7) Office--The Office of Rural Community Affairs.

(8) Local government--A unit of general local government.

(9) Low-and moderate-income person--A member of a family which earns less than 80% of the area median family income, as defined under the United States Department of Housing and Urban Development §8 Assisted Housing Program.

(10) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Poverty--The current official poverty line established by the Director of the Federal Office of Management and Budget.

(12) Primary beneficiary--A low or moderate income person.

(13) Regional review committee--A regional community development review committee, one of which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(14) Slum or blighted area--An area which has been designated a state enterprise zone, or an area within a municipality or county that is detrimental to the public health, safety, morals, and welfare of the municipality or county because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal or county limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in subparagraphs (A) - (C) of this paragraph or any combination of those causes that:

(i) endanger life or property by fire or other causes; or

(ii) are conducive to:

(I) the ill health of the residents;

(II) disease transmission;

(III) abnormally high rates of infant mortality;

(IV) abnormally high rates of juvenile delinquency and crime; or

(V) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(15) Slum or blight, spot basis--A building which has been declared as a slum or blight and has multiple and unattended building code violations, and qualifies as slum or blighted on a spot basis under local law.

(16) State review committee--The State Community Development Review Committee established pursuant to Texas Government Code, §487.353.

(17) Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(18) Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG to eligible units of general local government in the following program areas:

(1) community development fund;

(2) Texas Capital fund. The Texas Capital Fund (TCF) is administered by the TDA under an interagency agreement with the Office. Applications for the TCF shall be submitted to the TDA.

(3) planning/capacity building fund;

(4) disaster relief fund;

(5) urgent need fund;

(6) colonia fund;

(7) small towns environment program fund;

(8) renewable energy demonstration pilot program.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TxCDBG fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) A city may submit a single jurisdiction application that includes beneficiaries located within the extraterritorial jurisdiction of the city. However, the applicant must document that each activity benefiting persons located in its extraterritorial jurisdiction is meeting its community and housing development needs, including the needs of low and moderate income persons. A city cannot submit a single jurisdiction application that includes beneficiaries located inside the corporate city limits and outside of the city's extraterritorial jurisdiction. In this instance, the city and county in which the beneficiaries outside of the city's extraterritorial jurisdiction are located must submit the project as a multi-jurisdiction application.

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefiting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG fund category.

(C) An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TxCDBG application threshold requirements would be considered ineligible.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the TxCDBG fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Office and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph (1)(A) - (C) of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TxCDBG. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §§5301 et seq.) is ineligible for funding under the TxCDBG.

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current TxCDBG application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses (including smoke testing televising/video taping line work, or any other investigative method to determine the overall scope and location of the project work activities); pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TxCDBG contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefiting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefiting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Office and, in the case of TCF hearings, by the TDA, in lieu of publication of notices. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing,

an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting a formal application, an applicant for TxCDBG funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Office and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

(B) For an application submitted for housing infrastructure fund assistance, an applicant must hold two public hearings. At least one public hearing shall be held prior to the preparation of the application and a second public hearing shall be held prior to submission of the application.

(C) An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG, the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TxCDBG funds, and the use of past TxCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing. For submission of a housing infrastructure fund application, these requirements must be followed for the first public hearing.

(E) The notice announcing the availability of the application for public review must be published five days prior to the submission of the application and the published notice must include the fund category for which the application is submitted, the amount of funds requested, a description of the application activities, the location or locations of the application activities, and the location and hours when the application is available for review.

(F) Any public hearing held prior to submission of the application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Office and, in the case of TCF program changes, by the TDA, proposed to be made in the use of TxCDBG funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearings must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low-and moderate-income that request such assistance in developing proposals for the use of TxCDBG funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TxCDBG, except for the Texas Capital Fund, may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Office staff resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Office due to human or computer error.

(C) Other procedural error. The application is not processed by the Office in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the TxCDBG of the Office no later than 30 days after the date the announcement of contract awards is published on the Office's website. The Office staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the Executive Director. The Executive Director then considers the appeal within 30 days and makes a decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning an application is rejected, the office notifies the applicant of its decision, including the basis for rejection.

(4) Appeal of Executive Director's Decision to the Board.

(A) If the appealing party is not satisfied with the Executive Director's response to the appeal, it may appeal in writing directly to the Board within seven days after the date of the Executive Director's response. In order to be placed on the next agenda of the Board, the appeal must be received by the Office at least fourteen days prior to the next scheduled Board meeting. Appeals received after the four-

teenth calendar day prior to the Board meeting will be scheduled for the next Board meeting. The Executive Director shall prepare an appeal file for the Board's review based on the information provided. If the appealing party receives additional information after the Executive Director has denied the appeal, but prior to the posting of the appeal, for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the applicant after the written appeal. New information will cause the deadlines in this subparagraph to begin again. The Board will review the appeal de novo and may consider any information properly considered by the Office in making its prior decision(s).

(B) Public comment. The Board hears public comment on the appeal under its usual procedures. Persons making public comment are not parties to the appeal and no rights accrue to them under this section or any other appeal process. Nothing in this section provides a right to appeal any decision made on an application if the appealing party does not have direct grounds to appeal.

(C) Possible actions regarding applications. In instances in which the appeal if sustained by the Board could have resulted in an award to the applicant, the application shall be approved by the Board contingent on the availability of funds. If the appeal is denied, the Office shall notify the applicant of the decision.

(5) Decisions are final. Appeals not submitted in accordance with the section will not be considered. The decision of the Board is final.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TxCDBG:

(1) Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application. The applicant can meet this threshold by:

(A) Providing the roles and responsibilities of local staff designated to administer or work on the proposed project and a plan for project implementation;

(B) Indicating the intention to use a third-party administrator, if applicable; or

(C) If local staff along with a third-party administrator, will jointly administer the proposed project, by providing the roles and responsibilities of the designated local staff.

(2) Demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project. The applicant can meet this threshold by:

(A) Providing the name of the financial person on the applicant's staff, or evidence that the applicant intends to contract services for financial oversight; and

(B) Providing a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles.

(3) Levy a local property tax or local sales tax option.

(4) Demonstrate satisfactory performance on previously awarded TxCDBG contracts. The applicant can meet this threshold by:

(A) Showing past responses, if applicable, to audit and monitoring issues (over the most recent 48 months before the application due date) within prescribed times as indicated in the Office's resolution letter(s);

(B) The presence of documentation related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served;

(C) The non-presence of any outstanding delinquent response to a written request from the Office regarding a request for repayment of funds to TxCDBG; or

(D) By not having at least one outstanding delinquent response to a written request from the Office regarding compliance issues such as a request for closeout documents or any other required information.

(5) Resolve all outstanding compliance and audit findings related to previously awarded TxCDBG contracts and any other Office contracts. The applicant can meet this threshold if the applicant is actively participating in the resolution of any outstanding audit and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Office.

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date the state review committee meets to approve funding recommendations for applications from fund categories scheduled for state review committee review. For applications from fund categories that are not reviewed by the state review committee, a community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date that the state review committee approves funding recommendations. Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Texas Department of Housing and Community Affairs for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Board for review and consideration.

(7) TxCDBG funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TxCDBG funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TxCDBG funds by the incorporated city.

(8) Based on a pattern of unsatisfactory performance on previous TxCDBG contracts, unsatisfactory management and administration of previous TxCDBG contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of

official financial records and audits related to previous TxCDBG contracts, the Office or TDA, in the case of the Texas Capital Fund application may determine that an applicant is ineligible to apply for TxCDBG funding even though at the application deadline date it meets the threshold and past performance requirements. The Office or TDA, in the case of the Texas Capital Fund applications will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Office where the Office finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Office for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in its community development fund or planning/capacity building fund application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the Office refers the matter to the state review committee for disciplinary action. If the applicant provides false information in a colonia fund, disaster relief fund, small towns environment program fund, or urgent need fund application, the Office staff shall make a recommendation for action to the Executive Director of the Office. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate Executive Director. The state review committee makes a recommendation for action to the Executive Director of the Office at its next regularly scheduled meeting. Documentation of false information must be submitted at least ten business days prior to the next regularly scheduled meeting of the state review committee to be considered at that meeting. Recommendations that the state review committee or Executive Director may make include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TxCDBG funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Office and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Office.

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Office by the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks information prescribed in the instructions to the survey instrument or which includes conflicting information may be considered as a non-response for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys.

(5) A survey that was completed on or after January 1, 2004 for a previous TxCDBG application may be accepted by the Office for a new application to the extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Office for eligible TxCDBG activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TxCDBG Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Office Executive Director, or when applicable, approved by the Board or by the TDA on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the *Texas Register,* TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Office Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories by the Board. Should the TxCDBG be required to make payments to HUD to cover any loan payments not made by any recipient of a TxCDBG Section 108 loan guarantee, it would first use any available deobligated funds.

(m) Waivers. The Office may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Office finds that compelling circumstances exist outside the control of the applicant or contractor which justifies the approval of such a waiver. The Office shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Office. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total TxCDBG funds awarded under an open TxCDBG contract within 12 months from the start date of the contract or prior to the application deadlines and have received all applicable environmental approvals from TxCDBG covering this obligation. This threshold is applicable to TxCDBG contracts with an original 24-month contract period. To meet this

threshold, 50% of the TxCDBG funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TxCDBG contract activities do not have to be 50% completed, nor do 50% of the TxCDBG contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(2) Submit to the Office the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 24-month contract period and to TxCDBG contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund (original 24-month contract extended to 36-months). This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(3) TCF applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCF Implementation Manual).

(4) Submit to the Office the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 36 months, and to TxCDBG contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 36 months. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microenterprise loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(o) State review committee. The committee shall consult with and advise the Office's Executive Director on the administration and enforcement policies of the TxCDBG; in consultation with the Executive Director and TxCDBG office staff, review and approve grant and loan applications and associated funding awards of eligible counties and municipalities and advise and assist the Office's Executive Director in the allocation of program funds to the applicants; review appeals and submit recommendations for the disposition of such appeals to the Office's Executive Director in accordance with the procedures described in subsection (g) of this section; and report committee actions concerning these tasks to the Office's Executive Director through the minutes of committee meetings and written reports prepared by Office staff on behalf of the committee.

(p) Minority hiring/participation. It is the policy of the Office to encourage minority employment and participation among all applicants under the TxCDBG. All applicants to the TxCDBG are required to submit information documenting the level of minority participation as part of the application for funding.

(q) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TxCDBG contract must meet the requirements for Revolving Loan Funds described in the TxCDBG Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TxCDBG contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Office. The requirement in this section applies to all local Revolving Loan Funds (RLF) established from program income from Texas Capital Fund projects, housing projects and the Small Business Loan Fund. Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date. Every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived. A local Revolving Loan Fund may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

(r) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based, including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TxCDBG's award letter to the applicant,

the award will be immediately withdrawn by the TxCDBG (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Office's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Office.

(s) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Office follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(3) Funds recaptured under the colonia construction fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(4) Funds recaptured under the colonia planning fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(5) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. Any funds remaining from the program year allocation that are not used to fund colonia economically distressed areas program fund applications within twelve months after the Office receives the federal letter of credit would remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(6) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(7) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures described in subsection (l) of this section.

(8) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(9) For both the community development fund, if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in subsection (l) of this section.

(t) Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(u) Performance measures. Each applicant for TxCDBG funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TxCDBG project implementation manual that is required by the Office to report on Community Develop-

ment Block Grant program performance measures promulgated by the Board, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(v) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TxCDBG funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(w) For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocate not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

(x) The TxCDBG is under no obligation to approve any changes in a performance statement of a TxCDBG contract that would result in a program year score lower than originally used to make the award if the lower score would have initially caused that project to be denied funding. This does not apply to colonia self-help centers or the Texas Capital Fund.

(y) Any applicant's cash match included in the TxCDBG contract budget may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the applicant to accomplish the purpose described in the TxCDBG contract, in accordance with 24 CFR Part 570.

(z) If an audit becomes due after the award date, the Office may withhold the issuance of a contract until it receives a satisfactory audit. If a satisfactory audit is not received by the Office within four months of the audit due date, the Office may withdraw the award and re-allocate the funds in accordance with subsection (s) of this section (excludes the colonia self-help center awards and Texas Capital Fund awards).

(aa) If the Regional Review Committee for a particular region fails to approve, to the satisfaction of the Office, an objective scoring methodology for the 2009 Community Development Fund competition, the Office will award 2008 Program Year funds in that region for the Community Development Fund and Community Development Supplemental Fund based the state's existing scores under section IV (C)(1)(a-e) of the approved 2007 Texas CDBG Action Plan.

§255.8. Regional Review Committees.

(a) Composition. There is a regional review committee in each of the 24 state planning regions. Each committee consists of at least 12 members appointed by the governor. Composition of each regional committee reflects geographic diversity within the region, difference in population among eligible localities, and types of government (general law cities, home rule cities, and counties). The chairperson of the committee is also appointed by the governor. Members of the committee serve two-year staggered terms. An individual may not serve as a member of a regional review committee while serving as a member of the State Community Development Review Committee.

(b) Role. Under the Community Development Fund each Regional Review Committee is responsible for determining local project priorities and objective factors based on public input. The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors. Each regional review committee may review and comment on other TxCDBG applications.

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the TxCDBG.

(1) RRC Must Notify Applicants of Public Hearing to Adopt Local Project Priorities and Objective Scoring Factors.

(A) The RRC proceedings are subject to the Texas Open Meetings Act. The notice of the public hearing and agenda to determine local project priorities and objective scoring criteria must be posted electronically in the Secretary of State's internet site under the Texas Register/Open Meetings, http://www.sos.state.tx.us/texreg/. The notification process requires three days (72-hours) advance notice. The public hearing information must include the date, time and place of the RRC public hearing and the full agenda.

(B) In addition, the RRC must notify each eligible locality in the region in writing of the date, time and place of the RRC public hearing at least five days prior to the public hearing. One of the following four methods must be utilized when sending the notice: certified mail; electronic mail; first class (regular) mail, with a return receipt for local signature enclosed; or deliver in person (e.g., at a Council of Governments (COG) meeting);

(C) A notice of the public hearing must be published in a regional newspaper in the region at least three days in advance of the actual meeting. A published newspaper article is acceptable in lieu of a public notice if it meets the content (date, time, location and purpose) and timing requirements.

(D) The RRC must provide for public comments on the public hearing agenda. RRC discussions, deliberations and votes must be taken in public and must comply with the Texas Open Meetings Act.

(2) Quorum Required for Public Hearing. A public hearing of the RRC requires a quorum of seven members (regardless of status of term or elected office) appointed by the governor. Each Regional Review Committee must establish a policy that prohibits voting by committee members who arrive late or do not attend the entire public hearing held to adopt local project priorities and objective scoring factors and other RRC procedures.

(3) Only Appointed RRC Members May Vote on RRC Actions. An appointed member may designate a local official alternate from his/her city or county to participate in the RRCs deliberations for the purpose of meeting a quorum. This alternate person must be authorized in writing from the official being represented prior to his/her participation at any RRC meeting where voting is to occur. Please note, however, that proxies cannot vote on RRC matters. (This means that proxies may not vote on organizational matters, selection of project priorities, objective scoring factors, and any other related scoring procedures.) Proxies are there to satisfy the quorum requirements.

(4) RRC May Provide Information to ORCA Concerning Threshold Criteria. RRCs are encouraged to provide information that would assist ORCA in determining applicant compliance with eligibility thresholds and other information that may be considered by ORCA in the state scoring factors.

(d) RRC Responsible for Adopting Local Project Priorities and Objective Scoring Factors.

(1) Preliminary Meetings to Obtain Public Input and Provide Input to the RRC for Consideration During the Public Hearing to Discuss, Select, and Adopt Scoring Factors. The RRCs may hold preliminary meetings prior to the public hearing to obtain public input regarding priorities and scoring factors. Preliminary meetings held by the RRC are subject to the Texas Open Meetings Act. The RRC must notify each eligible locality in the region of the date, time and place of the preliminary meeting at least five days in advance of the meeting by first class (regular) mail, electronic mail, or telephone call. If a quorum is not established, the RRC preliminary meetings may be still be held, but no formal action may be taken. Sample scoring criteria may be developed with public participation and submitted to ORCA for preliminary review and for full discussion and deliberation by the RRC during the public hearing.

(2) Hold Public Hearing to Discuss, Select, and Adopt Scoring Factors. During the public hearing to discuss priorities and adopt objective scoring criteria, the public must be given an opportunity to comment on the priorities and the scoring criteria being considered by the RRC. The RRC may limit the duration of public comment period and length of time for comments. The final selection of the scoring factors is the responsibility of each RRC. The RRC may not adopt scoring factors that directly negate or offset ORCA scoring factors.

(3) RRC Indicates How Responses Will Be Scored and Identify Data Sources. The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC's adoption of its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(e) RRC Selects Administrative Support Staff. The RRC shall select one of the following entities to develop the RRC Guidebook, calculate the RRC scores, and provide other administrative RRC support: Regional Council of Governments (COG), TxCDBG staff or TxCDBG designee, or a combination of COG and TxCDBG staff or TxCDBG designee. The RRC Guidebook must identify the entity responsible for calculating the scores and must define the role of each entity selected. The RRC support staff, as determined above, is responsible for reviewing and verifying RRC information found in the application for scoring purposes, but may not accept additional information from applicants. The RRC support staff may only use the application information forwarded by ORCA for scoring purposes.

(f) RRC May Establish Maximum Grant Amounts. RRC may establish maximum grant amounts within the following ranges:

(1) Single Jurisdiction Applications: $250,000 - $800,000

(2) Multi-Jurisdiction Applications: $350,000 - $800,000

(3) Where the RRC takes no action, the grant maximum will be $800,000 for single jurisdiction applications and $800,000 for multi-jurisdiction applications.

(g) RRC Housing and Non-Border Colonia Set-Asides Encouraged. Each Regional Review Committee is highly encouraged to allocate a percentage or amount of its Community Development Fund (CD) allocation to housing projects and for RRCs in eligible areas, non-border colonia projects, for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development Fund activity during the biennial process. Housing projects/activities must conform to eligibility requirements in 42 U.S.C Section 5305 and applicable HUD regulations.) The RRC must include any set-aside in its Regional Review Committee Guidebook.

(h) RRC Guidebook Adopted and Approved At Least 90 Days Prior to Application Deadline. The RRC Guidebook should be adopted by the RRC and approved by TxCDBG staff at least 90 days prior to the CD application deadline set by ORCA. The RRC shall disseminate the RRC Guidebook to the applicants upon written approval by ORCA. The RRC will be required to submit the public input documentation along with the RRC Guidebook to ORCA.

(i) RRC Scores Are Due to ORCA Within 30 Days to Completion of the Deficiency Period. RRC scores are due to ORCA within 30 days after ORCA notifies the region in writing that the deficiency period is complete. The RRC may not change the requested amount of TxCDBG funding, change the scope of the project proposed, or negotiate the specifics of any application. Regional scores may be calculated and reported to ORCA on less than full point intervals (i.e., using decimal points) in order to reduce the chance of ties between regional applicants. ORCA will retain these same intervals when calculating the total scores and final rankings. The RRC shall announce the RRC scores to the public after ORCA has reviewed the scores for accuracy and written approval is received.

(j) COGs Preparing Applications/Administering CD Contracts May Not Be Selected As RRC Support Staff. COGs that prepare CD Fund applications and manage contracts will not be allowed to serve as Regional Review Committee (RRC) support staff for that region during the public hearing and scoring of applications. These COGs may not prepare the RRC Guidebook or score the region's applications.

(k) Impacts of Failure to Adopt RRC Objective Scoring Factors. ORCA will award 2008 funds for a region after its RRC has adopted an objective scoring for PY 2009. If the RRC does not adopt an objective scoring methodology and submit it to the state TxCDBG for approval by the established deadline above, the state TxCDBG staff will establish for the region the scoring factors in Appendix A for the 2009 applications as described above and will award PY 2008 funds for a region after the region's applications have been re-scored using the State scoring method in IV (C)(1)(a-e) of the 2007 Action Plan.

(l) Appeals. Appeals will be handled in accordance with the following procedures:

(1) Written Notification to RRC and ORCA. An applicant must notify its Regional Review Committee and ORCA in writing of the alleged specific violation of the RRC procedures within five working days following the date the RRC scores are made available to the applicants (RRC staff support is advised to record this date).

(2) RRC Notification to Applicants of Appeal(s). Within ten working days following the receipt of an appeal, the RRC will notify all applicants in the region that the RRC will reconvene to hear the appeal. The RRC will give notice to applicants that their scores may be affected by the outcome of the appeal.

(3) RRC Reconvenes to Hear the Appeal(s). In an open meeting, the RRC shall consult with the appellant jurisdiction and consider the appeal. With a simple majority quorum present (i.e., seven members), the RRC will vote to either deny the appeal and forward the appeal and the original regional scores to ORCA or to sustain the appeal and proceed with corrective actions. If the RRC sustains the appeal, the RRC makes corrections and forwards the corrected regional scores to ORCA. The RRC administrative staff will send a written description of the results of the appeals meeting to all applicants in the region and to ORCA. Please note that applicants negatively affected by an original appeal have the same procedural rights to counter-appeal.

(4) Applicants May Appeal a Decision of the RRC. Within five working days following the decision of the RRC, an applicant may submit an appeal of the RRC decision to ORCA. The appeal must be submitted to ORCA in writing stating the alleged specific violation of the RRC procedure.

(5) ORCA Makes Final Scoring and Ranking Determinations. If the appeal is unresolved by the RRC, denied at the regional level, or if an applicant appeals a decision of the RRC, the ORCA Executive Director will make a final determination as follows: sustain the appeal and make funding recommendations based on corrected regional scores; or reject the appeal and make funding recommendations considering the original RRC scores. ORCA will notify the region of the decision and post the final rankings for the region.

(6) Applicants May Appeal a Decision of the ORCA Executive Director and File a Complaint with the ORCA Board. An applicant may appeal a decision of the ORCA Executive Director by filing a complaint with the ORCA Board. The ORCA Board shall hold a hearing on a complaint filed with the Board and render a decision. After the ORCA Board renders a final decision, ORCA will notify the region of the determination and post the final rankings for the region.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 19, 2009.

TRD-200902489
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Effective date: July 9, 2009
Proposal publication date: April 17, 2009
For further information, please call: (512) 936-7887

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.5

The Texas Racing Commission adopts amendments to 16 TAC §311.5, License Fee, with a change to the rule as published in the March 13, 2009, issue of the *Texas Register* (34 TexReg 1775). An oversight was discovered in the proposed version of Figure: 16 TAC §311.5(c) in that there was no fee increase for Association Other. The adopted version increases this fee from $50 to $75.

The purpose of the rule adoption is to provide additional revenue to the Commission to administer the Texas Racing Act and to support the regulation of live and simulcast racing. The rule will provide additional revenue by increasing the licensing fees for the various occupations licensed by the Commission.

The proposal was discussed at the meetings on April 2 and June 3 of the Commission's Committee on Rules. The Commissioners invited input and ideas about opportunities to raise revenue. The Commissioners asked the attendees to consider the funding options and welcomed the attendees to provide additional input in the days following the meeting. At the June 3 meeting, one racetrack association presented a revised schedule that avoids increases on entry level workers, but imposes further increases on trainers, owners, and top association management. However, due to the lateness of the proposed revision and opposition from horsemen at the meeting, the commission did not adopt the revised schedule.

The amendments are adopted under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §5.01, which requires the Commission to set fees by rule in amounts reasonable and necessary to cover the Commission's costs of regulating, overseeing, and licensing live and simulcast racing at racetracks.

§311.5. License Fees.

(a) An applicant for a license must submit with the application documents the license fee in the amount set by the Commission in subsection (c) of this section.

(b) A license fee paid at a racetrack or at the Commission's headquarters must be paid by a money order, a certified check, a cashier's check, a credit card, or a personal check. The executive secretary may approve payment in cash at a racetrack if the association submits a plan that is approved by the executive secretary. The plan shall provide for the safety and security of the licensing office where the cash will be received and stored and licensing employees who will be responsible for handling and depositing the cash received. A license fee paid through the Texas OnLine portal may be paid by any method approved by the Texas OnLine Authority.

(c) The fee for an occupational license is as follows:
Figure: 16 TAC §311.5(c)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 17, 2009.

TRD-200902471
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: August 1, 2009
Proposal publication date: March 13, 2009
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES
SUBCHAPTER E. CONTESTED CASES

22 TAC §661.62

The Texas Board of Professional Land Surveying adopts an amendment to §661.62, concerning the complaint process. The amendment is adopted without changes to the proposed text as published in the March 20, 2009, issue of the *Texas Register* (34 TexReg 1937) and will not be republished.

The amendment will add language as to when a land surveyor may request a contested case hearing or an Informal Settlement Conference and clarify the time limit during which this request may be made.

No comments were received regarding adoption of this amendment.

The amendment is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 18, 2009.

TRD-200902475
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: July 8, 2009
Proposal publication date: March 20, 2009
For further information, please call: (512) 239-5263

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER D. STANDARDS FOR ALLOWABLE METHODS OF EUTHANASIA FOR ANIMALS IN THE CUSTODY OF AN ANIMAL SHELTER

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §169.81 and §169.82, new §169.83 and §169.84, and the repeal of §169.83, concerning the standards for allowable methods of euthanasia for animals in the custody of an animal shelter. New §169.83 and §169.84 are adopted with changes to the proposed text as published in the January 9, 2009, issue of the *Texas Register* (34 TexReg 171). Amendments to §169.81 and §169.82, and the repeal of §169.83 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments, repeal, and new sections are necessary to comply with Health and Safety Code, Chapter 821, Subchapter C, "Euthanasia of Animals," which provides the Executive Commissioner of the Health and Human Services Commission with the authority to administer the chapter and adopt rules necessary to effectively administer the program.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Sections 169.81 - 169.83 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are mandated.

SECTION-BY-SECTION SUMMARY

The amendment to §169.81 provides clarification and modifies the language to make it more concise. The amendment to §169.82 provides clarification of the term "animal shelter." The repeal and new §169.83 adds new language to provide instruction to animal shelter personnel on attempts to identify animal ownership and notifying owners prior to euthanasia. There is no fiscal impact as a result of this new language. The new §169.84 is the renumbered §169.83 that was moved for better flow of the rules and reorganized for clarity; and the new §169.84 updates euthanasia standards to be in compliance with the American Veterinary Medical Association (AVMA) revised *AVMA Guidelines on Euthanasia* (June 2007).

The revisions to the sections update and clarify language to enable those subject to the sections to more readily comply. The rules promote humane euthanasia for these animals and promote public health and safety.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: City of La Porte, Feather and Fur Animal Hospital, City of Garland, Texas Humane Legislative Network, Texas Municipal League, and Harris County. The commenters were not against the rules in their entirety; however, the commenters recommended changes as discussed in the summary of comments.

Comment: Concerning §169.83, a commenter stated there should be language as to where to look for tattoos, such as the abdomen, inner thighs, and the inside of the ear flap.

Response: The commission agrees and has added the example sites (abdomen, inner thighs, and inside ear flaps) provided by the commenter.

Comment: Concerning §169.83, a commenter stated that even though scanning for microchips is a "should," not a "shall," suggesting the use of a scanner may cause a hardship on small agencies without a scanner. Additionally, it may be difficult to examine the inner thigh of an aggressive or fractious dog or cat in order to search for a tattoo.

Response: The commission disagrees because both the scanning for microchips and searching for tattoos are a "should" func-

tion, not a "shall;" in legal terms, this means they are recommended, not required. No change was made to the rule as a result of this comment.

Comment: Concerning §169.83, a commenter recommended adding the following language, "A shelter that does not own a microchip scanning machine is not required to purchase one in order to comply with this rule." The commenter stated that the added language would reduce possible confusion by clarifying that position.

Response: The commission disagrees. The scanning is a "should" function, not a "shall;" in legal terms, this means it is recommended, not required. No change was made to the rule as a result of this comment.

Comment: Concerning §169.83, a commenter stated that the language should require the scanning of the animal for 125, 128 and 134 kHz chips.

Response: The commission disagrees because many shelters do not have microchip scanners and it could pose a hardship on them if they are required to use them. Additionally, at this time, it is the understanding of the commission that there are no national standards for type or frequency of microchips. No change was made to the rule as a result of this comment.

Comment: Concerning §169.83, a commenter recommended making scanning for microchips and searching for identification tattoos mandatory ("shall") rather than a suggestion ("should"); identifying the responsible individual by title; and requiring that scanning and searching shall be performed just prior to euthanasia. The commenter suggested that elsewhere within the rules, the department should use the word "shall" to establish the named individual/position who must accomplish this stated task/function. Establishing a finite period within which the animal shelter must scan for microchips and search for identification tattoos just prior to the final act of euthanasia increases the probability of finding the marker if it is present; this is due to the quieter, calmer conditions in the euthanasia room as required elsewhere in the proposed rules. The commenter suggested the following language: "The Animal Shelter Director shall ensure that animal shelter staff scan every animal scheduled for euthanasia for microchip identification and search the animal for identification tattoos. This scanning and searching shall occur not more than one-half hour prior to beginning the euthanasia injection/exposure to commercially compressed carbon dioxide, even if the animal had previously been scanned and searched. If animal shelter staff locate identification on an animal or if the animal is wearing a tag(s), the Animal Shelter Director shall ensure that animal shelter staff make reasonable efforts to locate and notify the animal's owner prior to euthanasia of that identified animal."

Response: Although the commission agrees that scanning for microchips and searching for tattoos prior to euthanizing an animal are highly recommended practices, the commission disagrees to making them mandatory. These functions may be difficult to achieve on particularly fractious, aggressive animals and the safety of shelter staff needs to be considered. Additionally, many shelters do not have scanners and it could pose a hardship on them if they are required to use them. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(a), a commenter stated this should read "concentrated" sodium pentobarbital to euthanize an animal.

Response: The commission disagrees because "sodium pentobarbital" is the term used in the Health and Safety Code, Chapter 821. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(1), a commenter stated this should include language that "an uncertified individual cannot perform euthanasia except in the presence and at the direction of a certified individual."

Response: The commission disagrees. There is no certification for individuals euthanizing an animal(s) in the custody of an animal shelter; the Health and Safety Code, Chapter 821, just requires that a person euthanizing an animal(s) in the custody of a shelter successfully complete a department-approved euthanasia training course. Additionally, an individual conducting euthanasia under these terms has to successfully complete the mandated training within the time period allowed by statute; the individual cannot conduct euthanasia simply by being in the presence of a trained individual. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(2), a commenter stated that listing the order of preference of routes of injection should be stricken because the route used is determined by a number of factors.

Response: Although the commission agrees that the route of injection is determined by a number of factors, it disagrees with deleting the listing because the order is based upon the *AVMA Guidelines on Euthanasia* (June 2007). No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(3), a commenter stated that a new undamaged sterile needle should be used for injections.

Response: The commission agrees because every attempt needs to be made to make the injection process as painless as possible. Therefore, the descriptive term "new" has been added.

Comment: Concerning §169.84(b)(3), a commenter stated that all needles should be disposed of in accordance with Occupational Safety and Health Administration (OSHA) standards.

Response: Although the commission agrees that all needles should be disposed of in accordance with OSHA regulations, listing another agency's requirements does not fall under the purview of this rule. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(4), a commenter stated that the requirements that injection be conducted out of the view of another animal and that the carcass of any animal(s) be removed from the euthanasia area prior to a live animal entering that area will significantly increase the work of some agencies and will not add significantly to the welfare of the animals. The commenter felt that it has been an acceptable practice of agencies to euthanize an animal in a room with carcasses of previously euthanized animals on the floor; the commenter did not feel that the animal shelter should need to take the extra step of removing a carcass(es) before bringing in a live animal.

Response: The commission disagrees. Every attempt should be made to reduce the anxiety of the animal(s) being euthanized and reduce stress in the euthanasia environment. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(4), a commenter stated that, although ideally euthanasia can be done in a euthanasia room,

the commenter's shelter is an older one that is not equipped with a separate room for euthanasia and there is only room to conduct euthanasia in the kennel room. The commenter did not feel that hanging a curtain to block the view of the animals would work because the curtain could absorb and help in the spread of disease because it could not be sanitized, therefore putting the shelter in violation of 25 Texas Administrative Code, Chapter 169, Subchapter A, §169.26, Facilities for the Quarantining or Impounding of Animals. Additionally, if the curtain were to be placed in the dog kennel area, it would be difficult to have an animal being euthanized by intraperitoneal injection in a quiet area as referenced in §169.84. Also, if the curtain is located in the dog kennel area, there would be a danger to shelter staff if they euthanize cats in this area because of the dogs' barking. The commenter suggested the following language: "Injection shall be conducted in an area out of public view, and should be out of the view of another animal if the shelter is equipped to allow for such; additionally, any shelter built after the adoption date of these rules shall have a area to conduct euthanasia out of the view of other animal(s)."

Response: The commission disagrees in that screens and curtains made of materials that may be sanitized are available. The commenter describes conditions that are less than desirable in the commenter's facility as currently constructed and operated. However, the proposed rule change neither solves nor exacerbates these problems. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(4), a commenter stated that the requirements that injection be conducted out of the view of another animal and that the carcass of any animal(s) be removed from the euthanasia area prior to a live animal entering that area are not necessary because the commenter does not consider dogs and cats to be "sensitive species." The commenter felt that this would place extensive logistical burdens on government-operated facilities, so the commenter requested an exemption for government-operated facilities if this revision is incorporated. The commenter felt that this requirement was "codifying" the *AVMA Guidelines on Euthanasia* (June 2007); the commenter expressed that these are recommendations, not laws, and they do not apply as well for government-operated animal shelters as they do for private or non-profit veterinary facilities.

Response: The commission disagrees. Every attempt should be made to reduce the anxiety of the animal(s) being euthanized and reduce stress in the euthanasia environment. The *AVMA Guidelines on Euthanasia* (June 2007) also emphasizes minimizing animal stress. The *AVMA Guidelines on Euthanasia* (June 2007) states that it is desirable that, for sensitive species, other animals not be present when individual animal euthanasia is performed. Due to "sensitive species" not being defined in the *AVMA Guidelines on Euthanasia* (June 2007), the department contacted AVMA for their interpretation. The AVMA does consider both dogs and cats to be "sensitive species." These are species that are sensitive to signaling factors (for example, pheromones) released during situations in which fear and anxiety are invoked. This type of "alarm scent" emitted by an animal when frightened or wounded can elicit fear responses in other animals. The AVMA stated that dogs and cats respond to pheromones and, therefore, are considered to be "sensitive species." Additionally, the *AVMA Guidelines on Euthanasia* (June 2007) are cited for euthanasia techniques in the Health and Safety Code, Chapter 821, for these rules; however, the statute is more restrictive than these guidelines for euthanasia of dogs and cats. No changes were made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(6), a commenter stated that they agreed with eliminating the need to weigh each animal.

Response: The commission agrees that this was a good proposed amendment to the rule. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(8), a commenter stated that the animals given sodium pentobarbital by intraperitoneal injection should not have to be placed in a quiet area without physical contact with other animals during the dying process because the commenter does not consider dogs and cats to be "sensitive species." The commenter felt that this would place extensive logistical burdens on government-operated facilities, so the commenter requested an exemption for government-operated facilities if this revision is incorporated. The commenter then stated that the current standards for euthanasia should remain in place. The commenter also felt that this requirement was "codifying" the *AVMA Guidelines on Euthanasia* (June 2007); the commenter expressed that these are recommendations, not law, and they do not apply as well for government-operated animal shelters as they do for private or non-profit veterinary facilities.

Response: The commenter presents conflicting requests and an element of confusion because this requirement is already a current standard in the rule; it was just renumbered from §169.83 to §168.84. In that it has been a requirement since May 2004, no additional burdens on government-operated facilities will be incurred. Additionally, the *AVMA Guidelines on Euthanasia* (June 2007) is cited for euthanasia techniques in the Health and Safety Code, Chapter 821, for these rules; however, the statute is more restrictive than these guidelines for euthanasia of dogs and cats. The *AVMA Guidelines on Euthanasia* (June 2007) recommends that, due to the extended dying process associated with intraperitoneal injection, an animal euthanized by this route of injection be placed in a quiet area to minimize excitement and trauma. The AVMA does consider both dogs and cats to be "sensitive species." These are species that are sensitive to signaling factors (for example, pheromones) released during situations in which fear and anxiety are invoked. This type of "alarm scent" emitted by an animal when frightened or wounded can elicit fear responses in other animals. The AVMA stated that dogs and cats respond to pheromones and, therefore, are considered to be "sensitive species." No changes were made to the rule as a result of this comment.

Comment: Concerning §169.84(c), a commenter stated not being an advocate of carbon monoxide euthanasia for any dogs or cats and felt that this form of euthanasia should be reserved only for use in reptiles and avian species or perhaps very fractious animals that cannot be restrained without jeopardizing the safety of the handling personnel. The commenter felt that avoiding the carbon monoxide chamber altogether seemed to be a better utilization of shelter personnel, veterinary professionals, or technicians (except for reptiles and avian species); additionally, reptile and avian carbon monoxide chambers could be smaller, use less carbon monoxide, and thereby pose less of a human health hazard as well.

Response: The commission disagrees because the Health and Safety Code, Chapter 821, allows the use of commercially-compressed carbon monoxide for dogs and cats in a shelter and mandates that the commission establish rules pertaining to its use in animal shelters. Unless the statute is amended, the in-

clusion of this method of euthanasia cannot be eliminated in its rules. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(c)(1), a commenter wanted the language to read, "It must be performed in a commercially manufactured carbon monoxide chamber." The commenter stated that many shelters are using "make shift" chambers, resulting in gross inefficient operation and tragic inhumane deaths.

Response: Although the commission agrees with this concept, there are very few manufacturers of these chambers and the expense of purchasing one could cause economic hardship for some shelters. Compliance with the rule mandates that non-commercially manufactured carbon monoxide chambers be designed and constructed, at a minimum, to equal the effectiveness of a commercially manufactured chamber. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(c)(5), a commenter stated that even though this is a "should," since the chamber must be outside or in a well-ventilated area, if it is outside in the summer, there is a good chance the ambient temperature of the atmosphere will be above 85 degrees. The commenter suggested adding a recommendation that outdoor facilities should use the chamber early in the day before the ambient temperature begins to rise.

Response: The commission agrees and has added the recommendation to use the chamber during early morning.

Comment: Concerning §169.84(c)(6), a commenter recommended adding "All such equipment must be inspected at least once a year by a qualified technician to ensure it is in proper working order. A certificate containing the date, findings and corrective measures taken shall be signed by the inspector, and posted in the room where the chamber is located." The commenter stated that in order to have safe and humane euthanasia by means of a carbon monoxide gas chamber, all of the equipment must be in good working order and operative during each operation of the chamber. By adding the annual inspections and the replacement of gaskets and seals (as recommended by manufacturers of these chambers), failure to achieve these critical elements of operation is less likely.

Response: Although the commission agrees with the concept of inspection of carbon monoxide chambers, there is not an accepted standard for qualified technicians for this type of inspection. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(c)(7), a commenter recommended rewording to say "To ensure death, animals must be exposed to the carbon monoxide gas concentration set forth in paragraph (c)(4) above for a minimum of thirty minutes." The commenter stated that euthanasia technicians don't confirm cessation of respiratory movement before they open the chamber. Often the visibility in the chamber is not sufficient to accurately determine respiratory cessation. The commenter felt that leaving the animals in the chamber for a minimum time limit of "thirty minutes" instead of "five minutes" would help protect against animals still possessing life functions and prevent the employees from rushing the process.

Response: The commission disagrees because no research source could be located to validate this specific time recommendation. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(c)(12), a commenter stated that it seemed that some means of measuring decreased respiratory function was being thrust upon the animal shelter personnel in order to effectively adopt this rule; in addition, a determination of pregnancy also becomes a necessary component on the shelter's responsibility list. The commenter suggested adding wording pertaining to there being some veterinary supervision included in determining which animals are eligible for carbon monoxide euthanasia versus the intravenous route. By doing so, additional documentation would be necessary to support a veterinarian's examination of the animals prior to carbon monoxide chamber admission.

Response: The commission disagrees. Many shelters do not have veterinary oversight; requiring veterinary supervision would eliminate their capability to conduct euthanasia. Additionally, the wording in the proposed rule already includes the phrase "any animal that could be anticipated to have decreased respiratory function, such as the elderly, sick, injured, or pregnant." It does not mandate that these conditions be determined by medical testing or veterinary oversight. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(c)(12), a commenter stated this should read, "such animals may be resistant" instead of "such animals are resistant."

Response: The commission agrees and has replaced the word "are" with the words "may be."

Comment: Concerning §169.84(c)(12), a commenter disagreed with the 16-weeks of age cutoff for chamber euthanasia. The commenter felt that this was an arbitrary number and not based on any scientifically conducted study to specifically address this claim. The commenter stated that although the commenter could not change the AVMA's euthanasia recommendations, the commenter perceived AVMA as biased toward carbon monoxide euthanasia and doubted that this would ever change.

Response: The commission disagrees because not using carbon monoxide alone in animals less than 16 weeks of age was based on the *AVMA Guidelines on Euthanasia* (June 2007), which sets the standard for animal euthanasia techniques. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(c)(13), a commenter stated that since the rules require the use of independent sections or cages to separate individual animals if more that one animal is euthanized at a time, the "same species" requirement in this paragraph could be deleted. The commenter felt that if the animals are "compatible" and in separate sections or cages, that should be sufficient protection for the animals and their welfare. The commenter did not feel that an animal control officer should have to run the carbon monoxide chamber through two cycles if they had one dog and one cat to euthanatize. The commenter felt that both animals could be euthanatized at once without causing mental anguish to either. The commenter felt that it would be obvious to the animal control officer to not place incompatible animals in the chamber at once, just as the animal control officer would not put two incompatible dogs into the chamber at once.

Response: The commission disagrees. The "same species" language was taken from the *AVMA Guidelines on Euthanasia* (June 2007). Additionally, every attempt should be made to reduce stress for the animals in the euthanasia environment. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(e), a commenter recommended adding the following language at the end of this section, "either cardiac stick to verify cessation of heart function or by rigor mortis." The commenter stated hearing reports of numerous complaints from Texas animal shelters where animals have awakened in the freezer, at the landfill, and in the incinerator. The commenter felt that examination is not enough to confirm death. For instance, some shelters are confirming death by touching the eye or pinching between the toes for reflex and movement, which doesn't ensure death, but only that the animal is heavily anesthetized. The commenter felt the need to be very specific on what is meant by confirmation of death.

Response: The commission disagrees. The Health and Safety Code, Chapter 821, lists "techniques for verifying an animal's death" as a required topic in euthanasia training courses. Therefore, specific modes for this verification are covered in the mandated training courses. No change was made to the rule as a result of this comment.

The following change has been made to provide consistency of terms.

Change: Concerning §169.84(b)(4), the last reference of "animal" was changed to "animal(s)" for consistency in wording throughout the rule.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§169.81 - 169.84

STATUTORY AUTHORITY

The amendments and new rules are authorized by Health and Safety Code, Chapter 821, "Euthanasia of Animals," §821.053, which requires the Executive Commissioner of the Health and Human Services Commission to establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter; §821.054, which requires the Executive Commissioner of the Health and Human Services Commission to establish standards for a carbon monoxide chamber used to euthanize an animal in the custody of an animal shelter and the requirements and procedures for administering commercially compressed carbon monoxide to euthanize an animal in the custody of an animal shelter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§169.83. Animal Identification and Owner Notification.

Prior to euthanasia, each animal should first be scanned for microchip identification and searched for identification tattoos; at minimum, the abdomen, inner thighs, and inside ear flaps should be searched for tattoos. If identification is located on an animal or the animal is wearing a tag(s), reasonable efforts to locate and notify the animal's owner shall be made prior to euthanasia.

§169.84. Allowable Methods of Euthanasia.

(a) Only sodium pentobarbital or commercially compressed carbon monoxide gas may be used to euthanize a dog or cat in the custody of an animal shelter.

(b) When sodium pentobarbital is used to euthanize an animal, the following requirements apply.

(1) Persons administering sodium pentobarbital must be thoroughly trained in the proper methods and techniques for euthanizing animals. A person has until the 120th day following the date of initial employment to complete this training.

(2) The routes of injections of sodium pentobarbital, listed in the order of preference, shall be:

(A) intravenous injection by hypodermic needle;

(B) intraperitoneal injection by hypodermic needle; or

(C) intracardiac injection by hypodermic needle.

(3) Any injection must be administered using a new, undamaged sterilized hypodermic needle of a size suitable for the size and species of the animal.

(4) Injection shall be conducted in an area out of public view and out of the view of another animal; additionally, the carcass of any animal(s) shall be removed from the euthanasia area prior to a live animal(s) entering that area.

(5) The area used for injection shall have sufficient lighting to allow for visual accuracy during the injection process.

(6) A dose of sodium pentobarbital appropriate for the animal's weight shall be administered to that animal.

(7) Each animal given sodium pentobarbital by intraperitoneal injection must be given 3 to 4 times the intravenous dose.

(8) Each animal given sodium pentobarbital by intraperitoneal injection shall be placed in a quiet area, separated from physical contact with any other animal(s) during the dying process.

(9) Intracardiac injection may not be used unless the animal is heavily sedated, unconscious, or anesthetized.

(10) The carcass of any animal(s) euthanized by sodium pentobarbital must be stored and disposed of in a manner that minimizes the potential for scavenging by animals or humans.

(c) When commercially compressed carbon monoxide gas is used to euthanize an animal(s), the following requirements apply.

(1) It must be performed in a commercially manufactured carbon monoxide chamber or one designed and constructed, at a minimum, to equal the effectiveness of a commercially manufactured chamber.

(2) The chamber must be located outdoors or in a well-ventilated room.

(3) The chamber must be airtight and equipped with the following:

(A) an exhaust fan for indoor chambers which is capable of evacuating all gas from the chamber prior to the chamber being opened and is connected by a gas-type duct to the outdoors;

(B) a gas flow regulator and flow meter for the canister;

(C) a gas concentration gauge;

(D) an accurate temperature gauge for monitoring the interior of the chamber;

(E) if located indoors, a carbon monoxide monitor on the exterior of the chamber that is connected to an audible alarm system, which will sound in the room containing the chamber;

(F) explosion-proof electrical equipment if equipment is exposed to carbon monoxide;

(G) a view-port with either internal lighting or external lighting sufficient to allow visual surveillance of any animal(s) within the chamber; and

(H) if designed to euthanize more than one animal at a time, independent sections or cages to separate individual animals.

(4) The gas concentration process must achieve at least a 6% carbon monoxide gas concentration not to exceed 10% due to flammability and explosiveness throughout the chamber within 5 minutes after the introduction of carbon monoxide into the chamber is initiated.

(5) The ambient temperature inside the chamber should not exceed 85 degrees Fahrenheit (29.4 degrees Celsius) when it contains a live animal(s). For an outdoor chamber, achievement may be facilitated by use of the chamber during early morning.

(6) All equipment, as specified in paragraph (3)(A) - (H) of this subsection, must be in proper working order and used at all times during the operation of the chamber.

(7) An animal(s) must not be removed from the chamber until at least 5 minutes after cessation of respiratory movement.

(8) The chamber must be thoroughly vented prior to removing any carcasses.

(9) The chamber must be thoroughly cleaned after the completion of each cycle. Chamber surfaces must be constructed and maintained so they are impervious to moisture and can be readily sanitized.

(10) Persons operating the chamber must be thoroughly trained in the proper methods and techniques for euthanizing animals. A person has until the 120th day following the date of initial employment to complete this training.

(11) Operation, maintenance, and safety instructions and guidelines must be displayed prominently in the area containing the chamber.

(12) Carbon monoxide shall not be used to euthanize any animal reasonably presumed to be less than 16 weeks of age. Carbon monoxide shall also not be used to euthanize any animal that could be anticipated to have decreased respiratory function, such as the elderly, sick, injured, or pregnant. Such animals may be resistant to the effects of carbon monoxide and the time required to achieve death in these animals may be significantly increased. In animals with decreased respiratory function, carbon monoxide levels rise slowly, making it more likely that these animals will experience elevated levels of stress.

(13) Only compatible animals of the same species may be placed in the chamber simultaneously.

(14) No live animal(s) may be placed in the chamber with a dead animal(s).

(d) Any animal other than cats and dogs, including birds and reptiles, in the custody of an animal shelter shall be humanely euthanized only in accordance with the methods, recommendations, and procedures prepared by the American Veterinary Medical Association (AVMA) and set forth in the *AVMA Guidelines on Euthanasia* (June 2007) applicable to each species of animal.

(e) When using any of the allowable methods of euthanasia, each animal must be monitored between the time euthanasia procedures have commenced and the time death occurs, and the animal's body must not be disposed of until death is confirmed by examination of the animal for cessation of vital signs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 22, 2009.

TRD-200902565
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: July 12, 2009
Proposal publication date: January 9, 2009
For further information, please call: (512) 458-7111 x6972

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25 TAC §169.83

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, Chapter 821, "Euthanasia of Animals," §821.053, which requires the Executive Commissioner of the Health and Human Services Commission to establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter; §821.054, which requires the Executive Commissioner of the Health and Human Services Commission to establish standards for a carbon monoxide chamber used to euthanize an animal in the custody of an animal shelter and the requirements and procedures for administering commercially compressed carbon monoxide to euthanize an animal in the custody of an animal shelter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES
SUBCHAPTER T. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT POLICIES

28 TAC §§3.3303, 3.3306, 3.3308, 3.3319, 3.3322, 3.3326

The Commissioner of Insurance adopts amendments to §§3.3303, 3.3306, 3.3308, 3.3319, 3.3322 and new §3.3326, concerning minimum standards for Medicare supplement policies issued or issued for delivery in this state. The amendments to §3.3306 and §3.3308 are adopted with changes to the proposed text published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2432). New §3.3326 is adopted with one minor change to correct a typographical error. The amendments to §§3.3303, 3.3319, and 3.3322 are adopted without changes.

REASONED JUSTIFICATION. The amendments and new section are necessary to incorporate the latest revisions to the National Association of Insurance Commissioners (NAIC) model rules concerning Medicare supplement insurance into the Department's existing Medicare supplement insurance rules. The revisions to the NAIC model rules were promulgated by the NAIC pursuant to the Medicare Improvements for Patients and Providers Act of 2008, Public Law 110-275 (MIPPA), which amends 42 U.S.C. §1395ss to overhaul the Medicare supplement plans and benefits, and pursuant to the Genetic Information Nondiscrimination Act of 2008, Public Law 110-233 (GINA), which amends 42 U.S.C. §1395ss to limit use of genetic testing and genetic information. The Insurance Code §1652.005 requires the Commissioner to adopt reasonable rules necessary and proper to carry out Chapter 1652 (which regulates Medicare supplement benefit plans), including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for the State of Texas to retain certification as a state with an approved regulatory program for Medicare supplement insurance in compliance with 42 U.S.C. §1395ss. The Insurance Code §1652.051 additionally requires the Commissioner to adopt rules to establish specific standards for provision in Medicare supplement benefit plans and standards for facilitating comparisons of different Medicare supplement benefit plans. These standards must include requirements that are at least equal to those required by federal law, rules, regulations, and standards. Section 104(a)(1) of MIPPA directs the NAIC to provide for implementation of changes made to 42 U.S.C. §1395ss by both MIPPA and GINA by amending the NAIC model rules relating to Medicare supplement insurance. Section 104(a)(2) of MIPPA further directs each State to conform its regulatory program to the revised NAIC model law and regulations within 1 year from the date the National

Association of Insurance Commissioners adopts the revised NAIC model law and regulations. In accordance with MIPPA §104(a)(2), adoption and implementation of the NAIC model rules by the Department is necessary for the State of Texas to retain certification as a state with an approved regulatory program for Medicare supplement benefit plans.

The Department posted an informal working draft of the proposed amendments and new section on the Department's internet website from January 26, 2009, to February 27, 2009. The Department formally proposed the amendments and new sections in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2432).

A public hearing on the rule proposal was not requested. In response to written comments on the published proposal, the Department has changed some of the proposed language in the text of the rule as adopted. Additionally, this adoption includes a minor typographical correction in one provision. None of the changes made to the proposed text, either as a result of comment or as a result of necessary clarification, materially alters issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

The following changes are made to the proposed text:

The Department has modified proposed §3.3306(b)(5)(B) - (G) and (K) to clarify that references to the Medicare Part A Deductible in those subparagraphs are referring to the "coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period." Therefore, all references to §3.3306(a)(3)(A) in §3.3306(b)(5)(B) - (G) and (K) in the published proposal, read in this adoption as: "§3.3306(a)(3)(A)(i)." This clarification is necessary to reference the deductible amount with more exact citations to the appropriate clause.

The Department has modified §3.3308(c)(2)(E) and (F) as adopted to specify that Medicare supplement policies or certificates with an effective date for coverage of June 1, 2010, or later must contain the new outline of coverage. This change is the result of a commenter's concern that excluding the effective dates for coverage from these paragraphs creates ambiguity in the rule. The effective date language is consistent with the federal requirements outlined in MIPPA, with the NAIC Model Regulation, and with language used elsewhere in the rule as adopted. While carriers must include the amended Outline of Coverage form with policies sold with an effective date for coverage of June 1, 2010 or later, carriers are not precluded from issuing or delivering such policies or certificates to consumers prior to that date. As adopted, §3.3308(c)(2)(E) reads: "(E) The commissioner adopts by reference the Outline of Coverage form, Form No. LHL 050 Rev. 06/09, which contains a chart of benefits for each of the standard Medicare supplement plans and required disclosures applicable to policies sold with an effective date for coverage of June 1, 2010 or later. The form is available at www.tdi.state.tx.us/forms/form10other.html." As adopted, §3.3308(c)(2)(F) reads: "(F) The commissioner adopts by reference the Outline of Coverage form, Form No. LHL 050 Rev. 12/04, which contains a chart of benefits for each of the standard Medicare supplement plans and required disclosures applicable to policies sold with an effective date for coverage prior to June 1, 2010, and on or after March 1, 1992. The form is available at www.tdi.state.tx.us/forms/form10other.html."

In addition, the Department has modified §3.3326 as adopted to provide that the effective date for the applicability of the section is July 1, 2009, in lieu the proposed May 21, 2009, effective date. As adopted, the first sentence of §3.3326 reads: "This section applies to all Medicare supplement policies and certificates with policy years beginning on or after July 1, 2009." Government Code §2001.036(a)(3), provides that "if a federal statute or regulation requires that a state agency implement a rule by a certain date, the rule is effective on the prescribed date." Section 104(d)(4)(A)(ii) of GINA, provides that the latest date for which a state must conform its regulations to the requirements of GINA is July 1, 2009. Compliance with the July 1, 2009, deadline is necessary for the State of Texas to retain certification as a state with an approved regulatory program for Medicare supplement benefit plans under 42 U.S.C. 1395ss. In addition, the Department has determined that certification as a state with an approved reg-

ulatory program for Medicare supplement benefit plans under 42 U.S.C. 1395ss is of vital importance to the Medicare supplement consumers of this state. A lapse in certification would cause extreme uncertainly in the Medicare supplement market regarding regulatory authority of the Department to enforce its regulatory program for Medicare supplement benefit plans. A lapse in certification would cause imminent peril to the health and welfare of Medicare supplement beneficiaries who rely on this Department to regulate Medicare supplement insurance plans and to protect the consumers of this state from unscrupulous business practices in the Medicare supplement market. For the foregoing reasons, §3.3326 as adopted will be effective July 1, 2009. This modification, however, does not alter the applicability of §104(c) of GINA, which provides that the federal statute is applicable to Medicare supplement policies and certificates with policy years beginning on or after May 21, 2009. The Department has also made a typographical correction to lower case the initial letter in the first word of §3.3326(7)(B) as adopted.

The following paragraphs provide a brief summary as well as an analysis of the reasons for the adopted amendments and new section.

The adopted amendments to §3.3303 are necessary to add definitions for "1990 Standardized Medicare supplement benefit plan," "2010 Standardized Medicare supplement benefit plan," and "Pre-Standardized Medicare supplement plan" in paragraphs (1), (2), and (21). These terms are used in the new rules and in the NAIC model rules. The adopted amendments also redesignate the remaining definitions accordingly.

The adopted amendment to §3.3306(a) is necessary to provide minimum benefit standards for the new 2010 Standardized Medicare supplement benefit plan policies or certificates. Adopted §3.3306(a)(1)(A) is necessary to specify restrictions and exceptions for the exclusion of preexisting conditions. Adopted §3.3306(a)(1)(B) is necessary to prohibit a Medicare supplement policy or certificate from indemnifying against losses resulting from sickness on a different basis than losses resulting from accidents. Adopted §3.3306(a)(1)(C) is necessary to provide that cost-sharing provisions in the plans must be amended to conform to applicable Medicare deductibles, copayments and benefit amounts as necessary. Adopted §3.3306(a)(1)(D) is necessary to restrict termination of coverage of a spouse to nonpayment of premium and to prohibit cancellation and nonrenewal by the insurer solely on the grounds of deterioration of health. Adopted §3.3306(a)(1)(E) is necessary to specify that polices must be guaranteed renewable, to provide restrictions on plan cancellation and to include provisions for continued coverage in cases where a policy is terminated by the group policyholder. Adopted §3.3306(a)(1)(F) is necessary to specify the restrictions on the determination and effect of a continuous loss. Adopted §3.3306(a)(1)(G) is necessary to specify the conditions for suspension and reinstitution of coverage in cases where the policyholder becomes eligible for or loses eligibility for benefits under the Social Security Act. Adopted §3.3306(a)(2) is necessary to provide that issuers must offer a policy or certificate including only the enumerated basic core package of benefits in addition to any of the standardized Medicare supplement insurance plans that may be offered. The basic core package of benefits is described in §3.3306(a)(2)(A) - (F) and includes coverage of Part A Medicare eligible expenses for hospitalization in various situations, coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, coverage for the coinsurance amount of Medicare eligible expenses under Part B, and coverage of cost sharing for all Part A Medicare eligible hospice and respite care expenses. Adopted §3.3306(a)(3) is necessary to specify standards for additional benefits that must be included in Plans B, C, D, F, F with High Deductible, G, M, and N. The additional benefits are described in §3.3306(a)(3)(A) - (E) and include required additional coverage for the Medicare Part A inpatient hospital deductible, coverage under Part A for post-hospital skilled nursing facility care, coverage for the Medicare Part B deductible, coverage for Medicare Part B excess charges, and coverage for medically necessary emergency care in a foreign country.

The adopted amendment to §3.3306(b) is necessary to set forth the additional standards for the issuance of the new 2010 Standardized Medicare supplement benefit plan policies and certificates, to provide a detailed description for each of the new benefit plans, and to address a procedure for the addition of new or innovative benefits to a standardized plan. Adopted §3.3306(b)(1) is necessary to require an issuer to offer a policy form or certificate form with only the basic core benefits and to also offer either standardized benefit Plan C or standardized benefit Plan F if the issuer makes available any additional benefits described in §3.3306(a)(3) or standardized benefit Plan K or standardized benefit Plan L. Adopted §3.3306(b)(2) is necessary to restrict the sale of Medicare supplement plans to the plans (Plans A - D, F, F with High Deductible, G, and K - N) provided in the rules and to clarify that no other groups, packages, or combination of benefits may be offered. Adopted §3.3306(b)(3) is necessary to provide a uniformity requirement for plan structure, language and format. Adopted §3.3306(b)(4) is necessary to allow plan designations to be modified by the issuer to the extent permitted by law. Adopted §3.3306(b)(5) is necessary to provide a detailed description for each of the 2010 Standardized Benefit Plans (Plans A - D, F, F with High Deductible, G, and K - N). Adopted §3.3306(b)(6) is necessary to allow issuers to provide, upon Departmental approval, new or innovative benefits with a standardized plan, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. Under adopted §3.3306(b)(6), the following requirements apply to any new or innovative benefits: (i) they must include only benefits that are appropriate to Medicare supplement insurance, (ii) they must be new or innovative, (iii) they must not be otherwise available; (iv) they must be cost-effective; (v) the approval of the new or innovative benefits must not adversely impact the goal of Medicare supplement simplification; (v) they must not include an outpatient prescription drug benefit; and (vi) they cannot be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

Reorganization and structural changes made to the standardized plans described in adopted §3.3306(b)(5) are necessary to include the elimination of Plan E, Plans H - J, and High-Deductible Plan J, the addition of Plans M and N, and the restructuring of Plans D and G. Prescription drug benefits were removed from the eliminated plans by the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003. In addition, the NAIC removed the Preventative Care and At-Home Recovery benefits from the standardized plans because of under-utilization and the lesser need for these types of benefits. These benefits were removed by the NAIC after considerable discussion and collaboration among policymakers and stakeholders during the reorganization of the plans. Upon removal of prescription drug benefits under the MMA and removal of the Preventative Care and At-Home Recovery benefits during reorganization under MIPPA, the eliminated plans were duplicative of other plans and became unnecessary. Plans D and G were re-

tained but were necessarily restructured to reflect these benefit changes. During the reorganization process, the new plans were designed to give beneficiaries new options for higher cost-sharing with a lower premium. New Plan M provides 50% coverage of the Part A deductible and no coverage of the Part B deductible. New Plan N provides 100% coverage of the Part A deductible and no coverage of the Part B deductible.

For transitional purposes, the minimum benefit standards for the 1990 Standardized Medicare supplement benefit plan policies or certificates and the composition requirements of those plans are included in §3.3306(c) and (d). Adopted new §3.3306(c) corresponds to the old §3.3306(1) - (3) and adopted new §3.3306(d) corresponds to the old §3.3306(4) - (5). No significant changes were made to the text of those renumbered sections, except that §3.3306(c)(3)(K) is deleted and moved to §3.3306(d)(2)(O) without changes. This amendment is necessary to conform the existing rules to the structure of the NAIC model rules.

The adopted amendments to §3.3308(c)(1) and (2) are necessary to update and correct internal references, delete the existing outline of coverage provided in existing Figure: 28 TAC §3.3308(c)(2)(D), and adopt by reference form LHL 050 Rev. 12/04 and form LHL 050 Rev. 06/09. The new outline of coverage specified in form LHL 050 Rev. 06/09, which is adopted by reference in new §3.3308(c)(2)(E), is necessary to provide a detailed description of plan benefits for all plans that must be provided to all applicants. The new outline of coverage, which follows the same format as the existing outline of coverage in form LHL 050 Rev. 12/04, contains information regarding the new plans and, where applicable, dollar amounts have been updated to show amounts paid by Medicare for the current calendar year. Issuers are required to update the dollar amounts paid by Medicare for future calendar years under the adopted amendment to §3.3308(c)(2)(A). The existing outline of coverage, formerly provided in Figure: 28 TAC §3.3308(c)(2)(D), is provided without change in form LHL 050 Rev. 12/04 and is adopted by reference for transitional purposes in new §3.3308(c)(2)(F).

The adopted amendments to §3.3322 are necessary to increase the number of additional policy certificate forms of the same type of policy that an issuer may offer and provide additional exceptions to the prohibition against the offering of multiple forms of the same type. Typically, an issuer may not file for approval of more than one form of a policy or certificate of each type. The amendments provide two new exceptions to the prohibition against multiple forms of the same type. Up to four policy forms of the same type may be offered for the addition of either direct response or agent marketing methods and for the addition of either guaranteed issue or underwritten coverage. These amendments are necessary to update the existing rules to conform to the additional policy standards provided for in the NAIC model rules.

Adopted new §3.3326 is necessary to comply with the GINA, which amends 42 U.S.C. §1395ss to limit use of genetic testing and genetic information. Adopted new §3.3326 applies to all Medicare supplement policies and certificates with policy years beginning on or after July 1, 2009. The adopted new section is necessary to prohibit the use of genetic information in the issuance or pricing of a policy or certificate, including a prohibition on the imposition of any exclusion of benefits based on a pre-existing condition on the basis of genetic information. The new section is additionally necessary to prohibit an issuer from requiring or requesting that an individual or a family member undergo genetic testing except under strict conditions for research purposes. Conditions include requirements that: (i) the request is made pursuant to research that complies with 45 C.F.R 46 or equivalent federal regulations and any applicable state or local law; (ii) the issuer clearly indicates to the individual that the request is voluntary and will have no effect on enrollment status or premium or contribution amounts; (iii) the genetic information shall not be used for purposes related to underwriting, eligibility, premium rates, issuance, renewal or replacement; (iv) the issuer notifies the Commissioner in writing, and (v) the issuer complies with other such conditions as the Commissioner may by regulation require. The new section also includes several definitions for terms frequently used within the new section. These definitions are necessary for purposes of clarity in implementing, enforcing, and complying with the §3.3326 prohibitions.

In addition to the foregoing adopted amendments and new section, minor changes have been made throughout the sections that are necessary to correct form and grammar, to make clarifications, to correct citations, to update examples and references to form numbers, and to organize the sections in conformity with the NAIC model rules.

HOW THE SECTIONS WILL FUNCTION.

§3.3303. Definitions. Section §3.3303 adds definitions for frequently used terminology in the subchapter and renumbers paragraphs as necessary for inclusion of the new definitions. New paragraph (1) defines "1990 Standardized Medicare supplement benefit plan" to refer to policies issued on or after March 1, 1992, the effective date for plan revisions made in conformity with the Omnibus Budget Reconciliation Act of 1990 (OBRA). New paragraph (2) defines "2010 Standardized Medicare supplement benefit plan" to refer to policies with an effective date for coverage on or after June 1, 2010. New paragraph (21) defines "Pre-Standardized Medicare supplement plan" to refer to policies issued prior to March 1, 1992, the effective date for plan revisions made in conformity to OBRA.

§3.3306. Minimum Benefit Standards. Section §3.3306 provides minimum benefit standards for the new 2010 Standardized Medicare supplement benefit plan policies or certificates and sets forth the additional standards for the issuance of the new 2010 Standardized Medicare supplement benefit plan policies and certificates, a detailed description for each of the new benefit plans, and a procedure for the addition of new or innovative benefits to a standardized plan. Adopted §3.3306(a)(1)(A) specifies restrictions and exceptions for the exclusion of preexisting conditions. Adopted §3.3306(a)(1)(B) prohibits a Medicare supplement policy or certificate from indemnifying against losses resulting from sickness on a different basis than losses resulting from accidents. Adopted §3.3306(a)(1)(C) provides that cost-sharing provisions in the plans must be amended to conform to applicable Medicare deductibles, copayments and benefit amounts as necessary. Adopted §3.3306(a)(1)(D) restricts termination of coverage of a spouse to nonpayment of premium and prohibits cancellation and nonrenewal by the insurer solely on the grounds of deterioration of health. Adopted §3.3306(a)(1)(E) specifies that polices must be guaranteed renewable, provides restrictions on plan cancellation and includes provisions for continued coverage in cases where a policy is terminated by the group policyholder. Adopted §3.3306(a)(1)(F) specifies the restrictions on the determination and effect of a continuous loss. Adopted §3.3306(a)(1)(G) specifies the conditions for suspension and reinstitution of coverage in cases where the policyholder becomes eligible for or loses eligibility for benefits under the Social Security Act. Adopted §3.3306(a)(2) requires issuers to offer a policy or certificate including only the enumerated basic

core package of benefits in addition to any of the standardized Medicare supplement insurance plans that may be offered. The basic core package of benefits is described in §3.3306(a)(2)(A) - (F) and includes coverage of Part A Medicare eligible expenses for hospitalization in various situations, coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, coverage for the coinsurance amount of Medicare eligible expenses under Part B, and coverage of cost sharing for all Part A Medicare eligible hospice and respite care expenses. Adopted §3.3306(a)(3) specifies standards for additional benefits that must be included in Plans B, C, D, F, F with High Deductible, G, M, and N. The additional benefits are described in §3.3306(a)(3)(A) - (E) and include required additional coverage for the Medicare Part A inpatient hospital deductible, coverage under Part A for post-hospital skilled nursing facility care, coverage for the Medicare Part B deductible, coverage for Medicare Part B excess charges, and coverage for medically necessary emergency care in a foreign country.

Adopted §3.3306(b)(1) requires an issuer to offer a policy form or certificate form with only the basic core benefits and also offer either standardized benefit Plan C or standardized benefit Plan F if the issuer makes available any additional benefits described in §3.3306(a)(3) or standardized benefit Plan K or standardized benefit Plan L. Adopted §3.3306(b)(2) restricts the sale of Medicare supplement plans to the plans (Plans A - D, F, F with High Deductible, G, and K - N) provided in the rules and clarifies that no other groups, packages, or combination of benefits may be offered. Adopted §3.3306(b)(3) mandates a uniformity requirement for plan structure, language and format. Adopted §3.3306(b)(4) allows plan designations to be modified by the issuer to the extent permitted by law. Adopted §3.3306(b)(5) provides a detailed description for each of the 2010 Standardized Benefit Plans (Plans A - D, F, F with High Deductible, G, and K - N). Adopted §3.3306(b)(6) allows issuers to provide, upon Departmental approval, new or innovative benefits with a standardized plan, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. Under adopted §3.3306(b)(6), the following requirements apply to any new or innovative benefits: (i) they must include only benefits that are appropriate to Medicare supplement insurance, (ii) they must be new or innovative, (iii) they must not be otherwise available; (iv) they must be cost-effective; (v) the approval of the new or innovative benefits must not adversely impact the goal of Medicare supplement simplification; (v) they must not include an outpatient prescription drug benefit; and (vi) they cannot be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan. Adopted §3.3306(b)(5) eliminates Plan E, Plans H - J, and High-Deductible Plan J, adds Plans M and N, and restructures Plans D and G.

The minimum benefit standards for the 1990 Standardized Medicare supplement benefit plan policies or certificates and the composition requirements of those plans are provided in §3.3306(c) and (d). Adopted new §3.3306(c) corresponds to the old §3.3306(1) - (3) and adopted new §3.3306(d) corresponds to the old §3.3306(4) - (5). No significant changes were made to the text of those renumbered sections, except that §3.3306(c)(3)(K) is deleted and moved to §3.3306(d)(2)(O) without changes.

§3.3308. Required Disclosure Provisions. Adopted amendments to §3.3308(c)(1) and (2) update and correct internal references and adopt by reference form LHL 050 Rev. 12/04 and form LHL 050 Rev. 06/09. The new outline of coverage specified in form LHL 050 Rev. 06/09, which is adopted by reference in new §3.3308(c)(2)(E), provides a detailed description of plan benefits for all plans that must be provided to all applicants. The new outline of coverage contains information regarding the new plans and, where applicable, dollar amounts have been updated to show amounts paid by Medicare for the current calendar year. Issuers are required to update the dollar amounts paid by Medicare for future calendar years under the adopted amendment to §3.3308(c)(2)(A). The old outline of coverage, adopted by reference in §3.3308(c)(2)(F), is included for transitional purposes.

§3.3319. Standards for Marketing. Adopted amendments to §3.3319 update a statutory citation to conform to the non-substantive revised insurance code and to remove references to the 1990 Standardized benefit plans.

§3.3322. Filing and Approval of Policies, Certificates and Premium Rates; Discontinuance of Forms. Adopted amendments to §3.3322 increase the number of additional policy certificate forms of the same type of policy that an issuer may offer and provide additional exceptions to the prohibition against the offering of multiple forms of the same type. The amendments provide two new exceptions to the prohibition against multiple forms of the same type. Up to four policy forms of the same type may be offered for the addition of either direct response or agent marketing methods and for the addition of either guaranteed issue or underwritten coverage. These amendments update the existing rule to conform to the additional policy standards provided for in the NAIC model rules.

§3.3326. Prohibition Against Use of Genetic Information and Requests for Genetic Testing in Medicare Supplement Policies. Adopted new §3.3326 applies to all Medicare supplement policies and certificates with policy years beginning on or after July 1, 2009. The adopted new section prohibits the use of genetic information in the issuance or pricing of a policy or certificate, including a prohibition on the imposition of any exclusion of benefits based on a pre-existing condition on the basis of genetic information. The new section additionally prohibits an issuer from requiring or requesting that an individual or a family member undergo genetic testing except under strict conditions for research purposes. Conditions include requirements that: (i) the request is made pursuant to research that complies with 45 C.F.R 46 or equivalent federal regulations and any applicable state or local law; (ii) the issuer clearly indicates to the individual that the request is voluntary and will have no effect on enrollment status or premium or contribution amounts; (iii) the genetic information shall not be used for purposes related to underwriting, eligibility, premium rates, issuance, renewal or replacement; (iv) the issuer notifies the Commissioner in writing, and (v) the issuer complies with other such conditions as the Commissioner may by regulation require. The new section also includes several definitions for terms frequently used within the new section.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

§3.3306. Minimum Benefit Standards.

Comment: One commenter recommends that §3.3306(a)(1)(A)(i) be modified by inserting the phrase "for similar benefits" after the phrase "policy or certificate" and that §3.3306(a)(1)(A)(ii) be modified by inserting the phrase "similar to those contained in the original policy or certificate" after the word "benefits." The commenter notes that inclusion of the two phrases would conform the Texas rules to Section 23 of the NAIC Model regulations (NAIC Model 651). The commenter

suggests that inclusion of the language would protect against adverse selection that can occur if policyholders have the unfettered ability to switch policies and benefit packages when they experience changes in their health status.

Agency Response: The Department disagrees. No changes were made to Section 23 of NAIC Model 651 in response to MIPPA and GINA. Significantly, the Texas rules provide a greater protection than the NAIC model regulations to Texas consumers against preexisting conditions, waiting periods, elimination periods, and probationary periods when a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate. While the commenter is correct that inclusion of the two phrases would conform the Texas rules to the NAIC Model regulations, the Department is unaware of adverse selection problems occurring in the Texas market.

§3.3308. Required Disclosure Provisions.

Comment: One commenter recommends that §3.3308(c)(2)(E) be modified by adding the phrase "applicable to policies sold with an effective date for coverage of June 1, 2010, or later" to the end of the first sentence and that §3.3308(c)(2)(F) be modified by adding the phrase "applicable to polices sold with an effective date for coverage prior to June 1, 2010" to the end of the first sentence. The commenter suggests that adoption of this additional language would provide clarification that Medicare supplement policies or certificates with an effective date for coverage of June 1, 2010, or later must contain the new outline of coverage but that carriers are not precluded from issuing or delivering such policies or certificates to consumers prior to that date. The commenter also contends that this approach is consistent with the federal requirements outlined in MIPPA and with the NAIC Model Regulation.

Agency Response: The Department agrees and has made the suggested changes to §3.3308(c)(2)(E) and (F) as adopted. In addition, the Department has further clarified that §3.3308(c)(2)(F) as adopted is only "applicable to polices sold with an effective date for coverage prior to June 1, 2010, and on or after March 1, 1992."

§3.3322. Filing and Approval of Policies, Certificates and Premium Rates; Discontinuance of Forms.

Comment: One commenter asks whether the 2010 Standardized benefit plans should be filed as a new product independent of the 1990 Standardized benefit plans.

Agency Response: Yes, the 2010 Standardized benefit plans should be filed as a new product. Since the 2010 Standardized benefit plans are new plans, separate and distinct from the 1990 Standardized benefit plans, the 2010 Standardized benefit plans will operate independently from the 1990 Standardized benefit plans. The Department reminds carriers that all policy forms or certificate forms for use in Texas must be filed and approved in accordance with §3.3322.

Comment: One commenter questions whether a 2010 Standardized benefit plan may be filed as an endorsement to an existing plan for policyholders who wish to convert from a 1990 Standardized benefit plan.

Agency Response: Since the 2010 Standardized benefit plans are new plans, separate and distinct from the 1990 Standardized benefit plans, the 2010 Standardized benefit plans must be offered independently from and may not be offered to consumers as an endorsement to the 1990 Standardized benefit plans. In addition, the Department notes that adding an endorsement to a 1990 Standardized benefit plan on or after June 1, 2010, would be in violation of the prohibition against issuing or issuing for delivery a 1990 Standardized benefit plans on or after June 1, 2010.

Comment: One commenter has an inquiry about the applicability of §3.3322(e) to the 1990 Standardized benefit plans and whether or not there are any requirements that carriers enter the market for the 2010 Standardized benefit plans.

Agency Response: Since the 1990 Standardized benefit plans are being discontinued by operation of law, §3.3322(e) will be inapplicable to the plans on or after June 1, 2010. While carriers may not offer a 2010 Standardized benefit plan to consumers prior to the filing and approval of the plan forms, a carrier may elect to postpone the offering of 2010 Standardized benefit plans.

Comment: One commenter asks whether the 2010 Standardized benefit plans will be rated independently from the 1990 Standardized benefit plans for both initial premium rates and premium rate increases.

Agency Response: Since the 2010 Standardized benefit plans are new plans, separate and distinct from the 1990 Standardized benefit plans, the initial premium rates for the 2010 Standardized benefit plans should be developed independently from the 1990 Standardized benefit plans. However, rate filings continue to be subject to compliance with §3.3307. While initial premium rates are not subject to any pooling requirements under the rules, subsequent filings, including annual filings made in compliance with §3.3307(e), must comply with §3.3307(d). Section 3.3307(d) provides, in part, that "policy forms, whether for open or closed blocks of business, providing similar benefits shall be combined" and that "[o]nce policy forms have been combined, they remain so for all rate purposes." The Department has determined that a 2010 Standardized benefit plan with the same letter designation as a 1990 Standardized benefit plan provides similar benefits for the purposes of determining compliance with §3.3307. The Department reminds carriers that all premium rates for the 2010 Standardized benefit plans must be filed and approved in accordance with §3.3322(c) and that premium rate increases must be filed and approved in accordance with §3.3323.

General.

Comment: One commenter commends the Department for providing Texas consumers with policies that are in compliance with federal law and which also provide protection against the adverse use of genetic information.

Agency Response: The Department appreciates the supportive comment.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For with changes: America's Health Insurance Plans.

For without changes: Office of Public Insurance Counsel.

Neither for nor against: Great American Financial Resources, Inc.

Against: None.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the Insurance Code §§1652.005, 1652.051(a)(2), 1652.151, 1652.152 and 36.001. Section 1652.005 provides that the Commissioner shall adopt reasonable rules necessary and proper to carry out Chapter 1652, including rules adopted in accordance with federal law relating to the regulation of

Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certification as a state with an approved regulatory program. Section 1652.051(a)(2) provides, in part, that the Commissioner shall adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different Medicare supplement benefit plans in accordance with any model rules and regulations required by federal law. Section 1652.151 provides that rules adopted under §1652.152 must include provisions and requirements that are at least equal to those required by federal law. Section 1652.152 requires an outline of coverage to be delivered to an applicant when the applicant applies for coverage and provides that the Commissioner by rule shall prescribe the format and content of the outline of coverage. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§3.3306. Minimum Benefit Standards.

(a) Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued or Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010. This section specifies the minimum standards applicable to all Medicare supplement policies or certificates issued or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No insurance policy, subscriber contract, certificate, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, certificate, or evidence of coverage meets the applicable standards in paragraphs (1) - (3) of this subsection. No issuer may offer or issue any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued or issued for delivery with an effective date prior to June 1, 2010, remain subject to the requirements of subsections (c) and (d) of this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this subchapter, the Insurance Code Chapter 1652, and any other applicable law.

(A) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(i) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting condition waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

(ii) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy or certificate shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits.

(iii) If a Medicare supplement policy or certificate is issued or issued for delivery to an applicant who qualifies under §3.3312(b) of this subchapter (relating to Guaranteed Issue for Eligible Persons) or §3.3324(a) of this subchapter (relating to Open Enrollment), the issuer shall reduce the period of any preexisting condition exclusion as required by §3.3312(a)(2) of this subchapter and §3.3324(c) and (d) of this subchapter.

(B) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(C) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(D) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium, or be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(E) Each Medicare supplement policy shall be guaranteed renewable and shall comply with the provisions of clauses (i) - (v) of this subparagraph.

(i) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(ii) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided in clause (iv) of this subparagraph, the issuer shall offer certificate holders an individual Medicare supplement policy which at the option of the certificate holder:

(I) provides for continuation of the benefits contained in the group policy; or

(II) provides for benefits that otherwise meet the requirements of this subparagraph.

(iv) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(I) offer the certificate holder the conversion opportunity described in clause (iii) of this subparagraph; or

(II) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(v) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(F) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the

maximum benefits. Receipt of Medicare Part D benefits must not be considered in determining a continuous loss.

(G) A Medicare supplement policy or certificate shall comply with clauses (i) - (iv) of this subparagraph:

(i) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period not to exceed 24 months in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(ii) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted effective as of the date of termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(iii) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder or certificate holder if the policyholder or certificate holder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage, if the policyholder or certificate holder provides notice of loss of coverage within 90 days after the date of the loss.

(iv) Reinstitution of coverages shall comply with subclauses (I) - (III) of this clause.

(I) Reinstitution of coverage shall not provide for any waiting period with respect to treatment of preexisting conditions.

(II) Reinstitution of coverage shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension.

(III) Reinstitution of coverage shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(2) Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, F with High Deductible, G, M and N. Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it. These plans include:

(A) coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(B) coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(C) upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations;

(E) coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

(F) coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by subsection (b) of this section.

(A) Medicare Part A Deductible:

(i) coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period; or

(ii) coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(B) Skilled Nursing Facility Care: coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(C) Medicare Part B Deductible: coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(D) One Hundred Percent of the Medicare Part B Excess Charges: coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(E) Medically Necessary Emergency Care in a Foreign Country: coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(b) Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued or Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010. The following standards are applicable to all Medicare supplement policies or certificates issued or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No insurance policy, subscriber contract, certificate, or evidence of coverage may be advertised, solicited, or issued for

delivery in this state as a Medicare supplement policy unless the policy, contract, certificate, or evidence of coverage complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued or issued for delivery with an effective date for coverage before June 1, 2010, remain subject to the requirements of subsections (c) and (d) of this section.

(1) An issuer of a Medicare supplement policy or certificate shall comply with subparagraphs (A) and (B) of this paragraph:

(A) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as defined in subsection (a)(2) of this section.

(B) If an issuer makes available any of the additional benefits described in subsection (a)(3) of this section, or offers standardized benefit Plans K or L (as described in paragraph (5)(H) and (I) of this subsection), then the issuer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in subparagraph (A) of this paragraph, a policy form or certificate form containing either standardized benefit Plan C (as described in paragraph (5)(C) of this subsection) or standardized benefit Plan F (as described in paragraph (5)(E) of this subsection).

(2) No groups, packages or combinations of Medicare supplement benefits other than those listed in this subsection shall be offered for sale in this state, except as may be permitted in paragraph (6) of this subsection and in §3.3325 of this subchapter (relating to Medicare Select Policies, Certificates and Plans of Operation).

(3) Benefit plans shall be uniform in structure, language, and format, as well as designation, to the standard benefit plans listed in this paragraph and conform to the definitions in §3.3303 of this subchapter (relating to Definitions). Each benefit plan shall be structured in accordance with the format provided in subsection (a)(2) and (3) of this section; or, in the case of Plans K or L, in accordance with the format provided in paragraph (5)(H) or (I) of this subsection; and list the benefits in the order shown. For purposes of this subsection, "structure, language, and format" means style, arrangement and overall content of a benefit.

(4) In addition to the benefit plan designations required in paragraph (3) of this subsection, an issuer may use other designations to the extent permitted by law.

(5) The make-up of 2010 Standardized Benefit Plans is as specified in subparagraphs (A) - (K) of this paragraph.

(A) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as defined in subsection (a)(2) of this section.

(B) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefits as defined in subsection (a)(2) of this section, plus 100 percent of the Medicare Part A deductible as defined in subsection (a)(3)(A)(i) of this section.

(C) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefits as defined in subsection (a)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in subsection (a)(3)(A)(i), (B), (C), and (E) of this section, respectively.

(D) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefits (as defined in subsection (a)(2) of this section), plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in an foreign country as defined in subsection (a)(3)(A)(i), (B), and (E) of this section, respectively.

(E) Standardized Medicare supplement (regular) Plan F shall include only the following: The basic (core) benefits as defined in subsection (a)(2) of this section, plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in subsection (a)(3)(A)(i), (B), (C), (D), and (E) of this section, respectively.

(F) Standardized Medicare supplement Plan F With High Deductible shall include 100 percent of covered expenses following the payment of the annual deductible set forth in clause (ii) of this subparagraph.

(i) The basic (core) benefits as defined in subsection (a)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in subsection (a)(3)(A)(i), (B), (C), (D), and (E) of this section, respectively.

(ii) The annual deductible in Plan F With High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by regular Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1,500 and shall be adjusted annually by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(G) Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefits as defined in subsection (a)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in subsection (a)(3)(A)(i), (B), (D), and (E), respectively.

(H) Standardized Medicare supplement Plan K is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(i) Part A Hospital Coinsurance, 61st through 90th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(ii) Part A Hospital Coinsurance, 91st through 150th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(iii) Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(iv) Medicare Part A Deductible: Coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount

per benefit period until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(v) Skilled Nursing Facility Care: Coverage for 50 percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(vi) Hospice Care: Coverage for 50 percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(vii) Blood: Coverage for 50 percent, under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(viii) Part B Cost Sharing: Except for coverage provided in clause (ix) of this subparagraph, coverage for 50 percent of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(ix) Part B Preventive Services: Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(x) Cost Sharing After Out-of-Pocket Limits: Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(I) Standardized Medicare supplement Plan L is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(i) the benefits described in subparagraph (H)(i), (ii), (iii), and (ix) of this paragraph;

(ii) the benefit described in subparagraph (H)(iv), (v), (vi), (vii), and (viii) of this paragraph, but substituting 75 percent for 50 percent; and

(iii) the benefit described in subparagraph (H)(x) of this subsection, but substituting $2000 for $4000.

(J) Standardized Medicare supplement Plan M shall include only the following: The basic (core) benefit as defined in subsection (a)(2) of this section, plus 50 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in subsection (a)(3)(A)(ii), (B), and (E) of this section, respectively.

(K) Standardized Medicare supplement Plan N shall include only the following: The basic (core) benefit as defined in subsection (a)(2) of this section, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in subsection (a)(3)(A)(i), (B), and (E) of this section, respectively, with copayments in the following amounts:

(i) the lesser of $20 or the Medicare Part B coinsurance or copayment for each covered health care provider office visit (including visits to medical specialists); and

(ii) the lesser of $50 or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6) An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

(c) Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued or Issued for Delivery on or After March 1, 1992, and with an Effective Date for Coverage Prior to June 1, 2010. No insurance policy, subscriber contract, certificate, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, certificate, or evidence of coverage meets the applicable standards in paragraphs (1) - (3) of this subsection. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this subchapter, the Insurance Code Chapter 1652, and any other applicable law.

(A) A Medicare supplement policy shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because they involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(i) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting condition waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

(ii) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy or certificate shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits.

(iii) If a Medicare supplement policy or certificate is issued or issued for delivery to an applicant who qualifies under §3.3312(b) of this subchapter or §3.3324(a) of this subchapter, the issuer shall reduce the period of any preexisting condition exclusion as required by §3.3312(a)(2) of this subchapter and §3.3324(c) and (d) of this subchapter.

(B) A Medicare supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(C) A Medicare supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(D) No Medicare supplement policy shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium, or be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(E) Each Medicare supplement policy shall be guaranteed renewable and shall comply with the provisions of clauses (i) - (v) of this subparagraph.

(i) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(ii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided in clause (iv) of this subparagraph, the issuer shall offer certificate holders Medicare supplement coverage which provides benefits as set out in subclause (I) or (II) of this clause, as follow:

(I) an individual Medicare supplement policy which (at the option of the certificate holder):

(-a-) provides for continuation of the benefits contained in the group policy; or

(-b-) provides for benefits that otherwise meet the requirement of this paragraph; or

(II) continuation of benefits under the group plan until there are no longer any certificate holders remaining who have opted for continuation of benefits under the group policy terminated by the policyholder.

(iii) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(I) offer the certificate holder conversion opportunity described in clause (ii) of this subparagraph; or

(II) at the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(iv) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion of preexisting conditions that would have been covered under the group policy being replaced.

(v) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the MMA, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(F) Termination of a Medicare supplement policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(G) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period (not to exceed 24 months) in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance.

(i) If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(ii) Each Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder or certificate holder if the policyholder or certificate holder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy or certificate shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder or certificate holder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(iii) Reinstitution of such coverages shall provide for the following:

(I) waiver of any waiting period with respect to treatment of preexisting conditions;

(II) resumption of coverage which is substantially equivalent to coverage in effect before the date of such suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of the suspension; and

(III) classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(H) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the MMA, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this paragraph.

(2) Standards for the basic (core) benefits common to benefit plans A - J. Every issuer shall make available a policy or certificate including only the basic "core" package of benefits described in subparagraphs (A) - (E) of this paragraph to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it. The basic core benefits shall consist of the following:

(A) coverage for Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(B) coverage for Part A Medicare eligible expenses, to the extent not covered by Medicare, incurred as daily hospital charges during use of Medicare lifetime hospital inpatient reserve days;

(C) upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulation) unless replaced in accordance with federal regulation; and

(E) coverage for the coinsurance amount (or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount) of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for Additional Benefits. The additional benefits as uniformly defined in subparagraphs (A) - (J) of this paragraph and in subsection (d)(2)(O) of this section shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided in subsection (d)(2)(A) - (I) of this section.

(A) Medicare Part A Deductible--Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(B) Skilled Nursing Facility Care--Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(C) Medicare Part B Deductible--Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(D) Eighty Percent of the Medicare Part B Excess Charges--Coverage for 80% of the difference between the actual Medicare Part B charge as billed and the Medicare-approved Part B charge, not to exceed any charge limitation established by the Medicare program or state law.

(E) One Hundred Percent of the Medicare Part B Excess Charges--Coverage for all of the difference between the actual Medicare Part B charge as billed and the Medicare-approved Part B charge, not to exceed any charge limitation established by the Medicare program or state law.

(F) Basic Outpatient Prescription Drug Benefit--Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(G) Extended Outpatient Prescription Drug Benefit--Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(H) Medically Necessary Emergency Care in a Foreign Country--Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(I) Preventive Medical Care Benefit or Services--Coverage for the preventive health services described in clauses (i) and (ii) of this subparagraph. Coverage for preventive medical care benefits or services shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare:

(i) an annual clinical preventive medical history and physical examination that may include tests and services from clause (ii) of this subparagraph and patient education to address preventive health care measures;

(ii) preventive screening tests or preventive services, the selection and frequency of which are determined to be medically appropriate by the attending physician.

(J) At-Home Recovery Benefit--Coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(i) For purposes of this benefit, the following definitions in subclauses (I) - (IV) of this clause shall apply.

(I) Activities of daily living include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(II) Care provider means a duly qualified or licensed home health aide or homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(III) Home shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(IV) At-home recovery visit means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(ii) Coverage requirements and limitations.

(I) At-home recovery services provided must be primarily services which assist in activities of daily living.

(II) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(III) Coverage is limited to:

(-a-) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(-b-) the actual charges for each visit up to maximum coverage of $40 per visit;

(-c-) $1,600 per calendar year;

(-d-) seven visits in any one week;

(-e-) care furnished on a visiting basis in the insured's home;

(-f-) services provided by a care provider as defined in this section;

(-g-) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(-h-) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(iii) Coverage is excluded for:

(I) home care visits paid for by Medicare or other government programs; and

(II) care provided by family members, unpaid volunteers, or providers who are not care providers.

(d) Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued or Issued for Delivery on or After March 1, 1992 and with an Effective Date for Coverage Prior to June 1, 2010.

(1) Requirement of uniformity for all Medicare supplement benefit plans. An issuer shall make available only those groups, packages or combinations of Medicare supplement benefits as described in this section, unless otherwise permitted by provisions of paragraph (2)(O) of this subsection and in §3.3325 of this subchapter. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plan "A," defined as the basic core plan of benefits in subsection (c)(2) of this section and described in paragraph (2)(A) of this subsection, and benefit plans "B" through "J," described in paragraph (2)(B) - (L) of this subsection. All benefit plans shall conform to the definitions set out in §3.3303 of this subchapter and §3.3304 of this subchapter (relating to Policy Definitions and Terms). Each benefit shall be structured in accordance with the format provided in subsection (c)(2) and (3) of this section. Each benefit plan shall list the benefits in the order shown in paragraph (2)(A) - (L) of this subsection. For purposes of this paragraph, "structure, language, and format" means style, arrangement and overall content of a benefit. In addition to the benefit plan designations required in this paragraph, an issuer may use other designations to the extent permitted by law.

(2) Make-up of Benefit Plans. Subparagraphs (A) - (O) of this paragraph set out the composition of benefit plans. Each benefit plan shall meet the requirements of this subchapter.

(A) Standardized Medicare Supplement Benefit Plan "A." Medicare supplement benefit Plan "A" shall include only the Core Benefits common to All Benefit Plans, as defined in subsection (c)(2) of this section.

(B) Standardized Medicare Supplement Benefit Plan "B." Medicare supplement benefit Plan "B" shall include only the Core Benefits as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible as defined in subsection (c)(3) of this section.

(C) Standardized Medicare Supplement Benefit Plan "C." Medicare supplement benefit Plan "C" shall include only the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country as defined in subsection (c)(3) of this section.

(D) Standardized Medicare Supplement Benefit Plan "D." Medicare supplement benefit Plan "D" shall include only the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and the At-Home Recovery Benefit as defined in subsection (c)(3) of this section.

(E) Standardized Medicare Supplement Benefit Plan "E." Medicare supplement benefit Plan "E" shall include only the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in subsection (c)(3) of this section.

(F) Standardized Medicare Supplement Benefit Plan "F." Medicare supplement benefit Plan "F" shall include only the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, the Skilled Nursing Facility Care, the Part B Deductible, One Hundred Percent of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in subsection (c)(3) of this section.

(G) Standardized Medicare Supplement Benefit High Deductible Plan "F." Medicare supplement benefit high deductible Plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses include the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, 100% of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in subsection (c)(3) of this section. The annual high deductible Plan "F" deductible shall consist of out-of-pocket expenses, other than premiums for services covered by the Medicare supplement Plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(H) Standardized Medicare Supplement Benefit Plan "G." Medicare supplement benefit Plan "G" shall include only the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Eighty Percent of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefit as defined in subsection (c)(3) of this section.

(I) Standardized Medicare Supplement Benefit Plan "H." Medicare supplement benefit Plan "H" shall include only the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country as defined in subsection (c)(3) of this section. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(J) Standardized Medicare Supplement Benefit Plan "I." Medicare supplement benefit Plan "I" shall include only the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, One Hundred Percent of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit as defined in subsection (c)(3) of this section. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(K) Standardized Medicare Supplement Benefit Plan "J." Medicare supplement benefit Plan "J" shall include only the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, One Hundred Percent of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit as defined in subsection (c)(3) of this section. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(L) Standardized Medicare Supplement Benefit High Deductible Plan "J." Medicare supplement benefit high deductible Plan "J" shall include only the following: 100% of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses include the Core Benefit as defined in subsection (c)(2) of this section, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, 100% of the Medicare Part B Excess Charges, Extended Outpatient Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit as defined in subsection (c)(3) of this section. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums for services covered by the Medicare supplement Plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "J" deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(M) Standardized Medicare supplement benefit Plan "K" shall include only the following:

(i) Coverage of 100% of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(ii) Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(iii) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(iv) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(v) Skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(vi) Hospice Care: Coverage for 50% of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(vii) Coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(viii) Except for coverage provided in clause (ix) of this subparagraph, coverage for 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in clause (x) of this subparagraph;

(ix) Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(x) Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in calendar year 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary.

(N) Standardized Medicare supplement benefit Plan "L" shall include only the following:

(i) The benefits described in subparagraph (M)(i), (ii), (iii) and (ix) of this paragraph;

(ii) The benefits described in subparagraph (M)(iv), (v), (vi), (vii) and (viii) of this paragraph, but substituting 75% for 50%; and

(iii) The benefit described in subparagraph (M)(x) of this paragraph, but substituting $2000 for $4000.

(O) Any benefit that an issuer may, with the prior approval of the commissioner, offer in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

§3.3308. Required Disclosure Provisions.

(a) General rules.

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision must be consistent with the type of contract issued. The provisions shall be appropriately captioned, and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the age of the policyholder.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the policyholder, or by which

the issuer exercises a specifically reserved right under a Medicare supplement policy, or by which the issuer is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder. After the date of issue of the policy or certificate, any rider or endorsement which increases benefits or coverage with concomitant increase in premium during the policy term shall be agreed to in writing signed by the policyholder, unless the benefits are required by the minimum standards for Medicare supplement insurance policies, or unless the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the additional premium charge shall be set forth in the policy.

(3) Medicare supplement policies shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions:

(A) the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations;"

(B) the policy or certificate shall define the term "preexisting condition" and shall provide an explanation of the term in its accompanying outline of coverage; and

(C) the policy or certificate shall include a provision explaining the reduction of the preexisting condition limitation for individuals that qualify under §3.3306(1)(A) of this title (relating to Minimum Benefit Standards), §3.3312(a)(2) of this title (relating to Guaranteed Issue to Eligible Persons), or §3.3324(c) and (d) of this title (relating to Open Enrollment).

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(6) Issuers of accident and sickness policies, certificates, or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis, to a person(s) eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services in no smaller than 12-point type.

(A) For purposes of this section, "form" means the language, format, style, type size, type proportional spacing, bold character, and line spacing.

(B) If a Guide incorporating the latest statutory changes is not available from a government agency, companies may comply with this provision by modifying the latest available Guide to the extent required by applicable law.

(C) Except as provided in this section, delivery of the Guide shall be made whether or not such policies, certificates, subscriber contracts, or evidences of coverage are advertised, solicited, or issued as Medicare supplement policies or certificates as defined in this regulation.

(D) Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Provided, however, issuers shall deliver the Guide to the applicant for a direct response Medicare supplement policy upon request, but not later than at the time the policy is delivered.

(7) Except as otherwise provided in this section, the terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import may not be used unless the policy is issued in compliance with §3.3306 of this title.

(b) Outline of coverage requirements for Medicare supplement policies.

(1) Issuers of Medicare supplement coverage in this state shall provide an outline of coverage to all applicants, including certificate holders under group policies, at the time application is presented to the prospective applicant, and, except for direct response policies, shall obtain an acknowledgment of receipt of such outline from the applicant.

(2) If a Medicare supplement policy or certificate is issued on a basis which would require revision of the outline of coverage delivered at the time of application, a substitute outline of coverage properly describing the policy or certificate actually issued shall accompany such policy or certificate when it is delivered and contain the following statement in no less than 12-point type, immediately above the company name: "Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(c) Form for outline of coverage. In providing outlines of coverage to applicants pursuant to the requirements of subsection (b)(1) of this section, insurers shall use a form which complies with the requirements of this subsection. The outline of coverage must contain each of the following four parts in the following order: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in paragraphs (1) and (2) of this subsection in no less than 12-point type.

(1) All plans shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(2) The items in subparagraphs (A) - (C) of this paragraph shall be included in the outline of coverage in addition to the items specified in the plan-specific outline-of-coverage forms.

(A) Dollar amounts which are shown in parentheses for each of the plan-specific charts on the following pages are for the calendar year in which the charts were published. Issuers shall, for each plan offered, appropriately complete outline-of-coverage-chart statements about amounts to be paid by Medicare, the plan, and the covered person by replacing the amount in parentheses with the dollar amount corresponding to each covered service for the applicable calendar year benefit period.

(B) The outline of coverage must include an explanation of any limitations and exclusions. Those limitations and exclusions resulting from Medicare program provisions may be disclosed as such by reference and need not be explained in their entirety. All limitations and exclusions related to preexisting conditions, and all other lim-

itations and exclusions not resulting from Medicare regulations must be fully explained in the outline of coverage.

(C) The outline of coverage must include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or the surrender of the policy or certificate. If the policy contains such provisions, a description of them must be included.

(D) The outline of coverage for Medicare Select policies or certificates shall include information regarding grievance procedures which meet the requirements of §3.3325(m) of this subchapter (relating to Medicare Select Policies, Certificates and Plans of Operation).

(E) The commissioner adopts by reference the Outline of Coverage form, Form No. LHL 050 Rev. 06/09, which contains a chart of benefits for each of the standard Medicare supplement plans and required disclosures applicable to policies sold with an effective date for coverage of June 1, 2010 or later. The form is available at www.tdi.state.tx.us/forms/form10other.html.

(F) The commissioner adopts by reference the Outline of Coverage form, Form No. LHL 050 Rev. 12/04, which contains a chart of benefits for each of the standard Medicare supplement plans and required disclosures applicable to policies sold with an effective date for coverage prior to June 1, 2010, and on or after March 1, 1992. The form is available at www.tdi.state.tx.us/forms/form10other.html.

(d) Notice requirements.

(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, every issuer providing Medicare supplement coverage to a resident of this state shall notify its policyholders, contract holders, and certificate holders of modifications it has made to Medicare supplement insurance policies, contracts, or certificates. The notice shall:

(A) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy, contract, or certificate; and

(B) inform each covered person as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notice shall not contain or be accompanied by any solicitation.

(4) Issuers shall comply with any notice requirements of the MMA.

§3.3326. Prohibition Against Use of Genetic Information and Requests for Genetic Testing in Medicare Supplement Policies.

This section applies to all Medicare supplement policies and certificates with policy years beginning on or after July 1, 2009.

(1) The definitions in subparagraphs (A) - (F) of this paragraph apply to this section only.

(A) "Issuer of a Medicare supplement policy or certificate" includes a third-party administrator, or other person acting for or on behalf of such issuer.

(B) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

(C) "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual.

(D) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(E) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(F) "Underwriting purposes" means:

(i) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

(ii) the computation of premium or contribution amounts under the policy;

(iii) the application of any pre-existing condition exclusion under the policy; and

(iv) other activities related to the issuance, renewal, or replacement of a contract of health insurance or health benefits.

(2) An issuer of a Medicare supplement policy or certificate must comply with subparagraphs (A) and (B) of this paragraph.

(A) The issuer shall not deny or condition the issuance or effectiveness of the policy or certificate including the imposition of any exclusion of benefits under the policy based on a pre-existing condition on the basis of the genetic information with respect to such individual; and

(B) The issuer shall not discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of the genetic information with respect to such individual.

(3) Nothing in paragraph (2) of this section shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from:

(A) denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(B) increasing the premium for any policy issued or issued for delivery to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy; in such case, the manifestation of a disease or disorder in one individual

cannot also be used as genetic information about other group members and to further increase the premium for the group.

(4) An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

(5) Paragraph (4) of this section shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment, as defined for the purposes of applying the regulations promulgated under part C of Title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time. The payment must be consistent with paragraph (2) of this section.

(6) In implementing paragraph (5) of this section, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(7) Notwithstanding paragraph (4) of this section, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the conditions specified in subparagraphs (A) - (E) of this paragraph is met:

(A) the request is made pursuant to research that complies with part 46 of Title 45, Code of Federal Regulations, or equivalent federal regulations, and any applicable state or local law or regulations for the protection of human subjects in research;

(B) the issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that:

(i) compliance with the request is voluntary; and

(ii) non-compliance will have no effect on enrollment status or premium or contribution amounts;

(C) no genetic information collected or acquired under this subsection shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate;

(D) the issuer notifies the commissioner in writing that the issuer is conducting activities pursuant to the exception provided for under this paragraph, including a description of the activities conducted; and

(E) the issuer complies with such other conditions as the commissioner may by rule require for activities conducted under this paragraph.

(8) An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(9) An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

(10) If an issuer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of paragraph (9) of this section if such request, requirement, or purchase is not in violation of paragraph (8) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 16, 2009.

TRD-200902449
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 6, 2009
Proposal publication date: April 17, 2009
For further information, please call: (512) 463-6327

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §163.21, concerning Administration. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposed rule review.

TRD-200902558
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: June 22, 2009

♦ ♦ ♦

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 239, Student Services Certificates, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBEC in 19 TAC Chapter 239 are organized under the following subchapters: Subchapter A, School Counselor Certificate; Subchapter B, School Librarian Certificate; Subchapter C, Educational Diagnostician Certificate; Subchapter D, Reading Specialist Certificate; and Subchapter E, Master Teacher Certificate.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 239, Subchapters A - E, continue to exist. The comment period begins July 3, 2009, and ends following receipt of public comments on the rule review of 19 TAC Chapter 239 at the next regularly scheduled SBEC meeting to be held on August 7, 2009.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. Comments should be identified as "SBEC Rule Review."

TRD-200902585
Jerel Booker
Associate Commissioner, Educator Quality and Standards, Texas Education Agency
State Board for Educator Certification
Filed: June 24, 2009

♦ ♦ ♦

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 240, American Sign Language Certificate, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 240 continue to exist. The comment period begins July 3, 2009, and ends following receipt of public comments on the rule review of 19 TAC Chapter 240 at the next regularly scheduled SBEC meeting to be held on August 7, 2009.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to sbecrules@tea.state.tx.us or faxed to (512) 463-0028. Comments should be identified as "SBEC Rule Review."

TRD-200902586
Jerel Booker
Associate Commissioner, Educator Quality and Standards, Texas Education Agency
State Board for Educator Certification
Filed: June 24, 2009

♦ ♦ ♦

Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed the review of Texas Administrative Code, Title 7, §§91.110, Protest Procedures for Applications, 91.115, Safety at Unmanned Teller Machines, 91.120, Posting of Notice Regarding Certain Loan Agreements, 91.125, Accuracy of Advertising, 91.210, Foreign Credit Unions, 91.1005, Conversion to a Texas Credit Union, 91.1006, Conversions to a Federal or Out-of-State Credit Union, 91.1007, Conversion to a Mutual Savings Institution, 91.1008, Conversion Voting Procedures and Restrictions; Filing Requirements, 91.3001, Opportunity To

Submit Comments on Certain Applications, and 91.3002, Conduct of Meetings to Receive Comments as published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1725).

The rules were reviewed as a result of the Credit Union Department's (Department) general rule review.

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting §§91.110, 91.115, 91.120, 91.125, 91.210, 91.1005, 91.1006, 91.1007, 91.1008, 91.3002, and 91.3110 continue to exist and readopts these rules without changes pursuant to the requirements of Government Code, §2001.039.

TRD-200902542
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 22, 2009

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §355.8065(h)(3)(B)

((1/2 x Available DSH funds) x [(Hospital's Medicaid Days x Weight)/(Total Weighted Medicaid Days)])

+

((1/2 x Available DSH funds) x [(Hospital's Low Income Days x Weight)/(Total Weighted Low Income Days)])

Figure: 4 TAC §20.22(a)(2)(B)(ii)

Pest Mgmt Zone	Earliest Planting Date	Destruction Deadline	End Date for Destruction Requirements
1	February 1	September 1	March 1
2 - Area 1	February 1	September 1	March 1
2 - Area 2	February 1	September 1	March 1
2 - Area 3	February 1	September 15	March 1
2 - Area 4	February 1	October 1	March 1
3 - Area 1	February 1	October 1	Emergence of new crop
3 - Area 2	February 1	October 15	Emergence of new crop
3 - Area 3	February 1	October 20	Emergence of new crop
4	February 1	October 10	Emergence of new crop
6	February 1	October 31	Emergence of new crop
7 - Area 1	February 1	November **10** [~~30~~]	Emergence of new crop
7 - Area 2	February 1	October 31	Emergence of new crop
8 - Area 1	February 1	October 31	Emergence of new crop
8 - Area 2	February 1	November **10** [~~30~~]	Emergence of new crop
9	April 1	March 1	May 1
10	March 25	February 1	March 25

Figure: 7 TAC §84.105(d)

BEFORE THE OFFICE OF CONSUMER CREDIT COMMISSIONER
STATE OF TEXAS

INDIGENCY AFFIDAVIT FOR APPEAL OF CONDITIONAL DELIVERY DETERMINATION

Before me, the undersigned notary, on this day personally appeared _____ _____ *(Insert Name of Affiant/Prospective Retail Buyer)*, who being duly sworn by me, states upon oath as follows:

I am over 18 years of age and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. Due to my financial situation, I cannot afford to pay the deposit required under Texas Finance Code, §348.013(m). I wish to appeal the Consumer Credit Commissioner's determination under §348.013(g) regarding my conditional delivery agreement with _____ _____ *(Insert Name and Address of Retail Seller and OCCC license number)*. The following information accurately states my income, assets, expenses, and liabilities. (*Please type or legibly print the requested information below; add more spaces as necessary)*:

MONTHLY INCOME		
Type of Income	**Amount (per month)**	**Source or Description of Income**
Employment	$	
Government Entitlement (e.g. disability, food stamps)	$	
Spouse's Income (if applicable)	$	
Any Other Income (e.g. interest, dividends)	$	

PROPERTY	
Property I Own ***Do not include homestead.***	**Approximate Value**
Motor Vehicles *(include make, model, year)* *Do not include any vehicles in dispute.*	*Find car values at www.kbb.com.*
1.	$
2.	$
Checking or Savings Accounts *(include name and location of financial entity)*	
1.	$
2.	$
Cash on Hand	$
Other Property I Own	
1.	$
2.	$

MONTHLY EXPENSES			
Rent/Mortgage	$	Car Payment	$
Utilities	$	Transportation	$
Food	$	Insurance	$
Child Care	$	Clothes/Laundry	$
Child Support	$	Finance Charges	$
Health Care	$	Other Expenses	$

DEBTS AND OTHER LIABILITIES		
Name of Creditor	Total Debt Amount	Monthly Payment
1.	$	$
2.	$	$
3.	$	$
4.	$	$
5.	$	$

Number of Dependents _____

As the prospective retail buyer, I am unable to pay the deposit required by Texas Finance Code, §348.013(m) for the appeal of the Consumer Credit Commissioner's conditional delivery determination. I verify that the statements made in this affidavit are true and correct.

_____

(Signature of Affiant/Prospective Retail Buyer)

(Insert Affiant's Printed Name) _____

(Insert Affiant's Address) _____

_____

Subscribed and sworn to before me on this _____day of _____, 20_____.

(Insert Notary's Seal)

_____

Notary Public, State of Texas

Figure: 7 TAC §89.701(c)

STATE OF TEXAS §
COUNTY OF §
§
§
_____ §

After recording, return to:
(Insert TRANSFEREE'S NAME)
(Insert TRANSFEREE'S STREET ADDRESS)

SWORN DOCUMENT AUTHORIZING TRANSFER OF TAX LIEN

Before me, the undersigned notary, on this day personally appeared *(Insert NAME OF OWNER OR AUTHORIZED REPRESENTATIVE)*, known to me to be the person whose name is subscribed below, and being duly sworn, upon oath deposed and stated as follows:

"My name is *(Insert NAME OF OWNER OR AUTHORIZED REPRESENTATIVE)*. I am over 18 years of age and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I or the entity I represent owns the real property described as follows:

Account No. or Property ID No.: _____

Legal Description: _____

Street Address, if applicable: _____

Amount Paid (must itemize): (a) taxes $_____ (b) interest $_____

(c) penalties $_____ (d) collection costs $_____

Tax Years: _____

Transferee's Name: _____

OCCC Property Tax License Lender No.: _____

OR Exemption Information: _____

Transferee's Street Address: _____

_____

"Pursuant to Texas Tax Code §32.06, I hereby authorize the above-named transferee or transferee's agent (the "Transferee"), to pay all taxes, penalties, interest, and collection costs imposed by any and all local taxing units or their agents on the real property, described above, for the tax years listed above. I further authorize and direct the tax assessor-collector(s) for said taxing units to issue a tax receipt with the collector's seal of office or notarized signature to the Transferee and to certify that 1) the taxes and any penalties and interest on the subject property and collection costs have been paid by the transferee on behalf of the owner; and 2) the tax lien on the owner's property has been transferred to the Transferee.

"I have been given notice that individual owners who are age 65 or older or disabled may be eligible for a tax deferral under Texas Tax Code §33.06 on their homestead property."

Property Owner
OR Authorized Representative: _____
Signature Date Signed

_____
Printed Name Representative Capacity (if applicable)

(Insert NOTARY'S SEAL)

SUBSCRIBED AND SWORN TO BEFORE ME on this, the _____day of_____, 20____.

_____
Notary Public, State of Texas

Figure: 7 TAC §89.702(c)

STATE OF TEXAS § Date: _____
COUNTY OF _____ §

CERTIFIED STATEMENT OF TRANSFER OF TAX LIEN AND AMOUNT PAID BY TRANSFEREE

Account No. or Property ID No.: _____

Legal Description: _____

Street Address, if applicable: _____

Taxing Unit(s): _____

Amount Paid (must itemize): (a) taxes $ _____ (b) interest $ _____

(c) penalties $ _____ (d) collection costs $ _____

Tax Years: _____

Property Owner's Name: _____

Transferee's Name: _____

Transferee's Street Address: _____

_____

I, *(Insert NAME OF COLLECTOR)*, tax assessor-collector for *(Insert NAME OF TAXING UNIT)* and for all taxing units for which *(Insert NAME OF TAXING UNIT)* collects ad valorem taxes, certify that the above-named transferee or transferee's agent ("Transferee") has paid the amount paid listed above due to the above-named taxing units on the property described above, and that the tax liens held by taxing units on the property for the tax years listed above are hereby transferred to Transferee in accordance with Texas Tax Code §32.06. I have issued a receipt to Transferee in conjunction with this certification reflecting the amount of taxes, penalties, interest, and collection costs paid.

(Insert NAME OF COLLECTOR)

(Insert NAME OF TAXING UNIT), Tax Assessor-Collector

BY: _____

(Signature of COLLECTOR OR DEPUTY)

(Insert SEAL OF COLLECTOR'S OFFICE,
OR Insert NOTARY'S SEAL and complete notary information below.)

SUBSCRIBED AND SWORN TO BEFORE ME on _____ by _____

_____ *(Insert NAME OF COLLECTOR OR DEPUTY signing above).*

_____

Notary Public, State of Texas

After recording, return to:
(Insert TRANSFEREE'S NAME)
(Insert TRANSFEREE'S STREET ADDRESS)

Figure: 7 TAC §97.113(b)

For Credit Unions with Total Assets Of:	The Operating Fee is:
Less than $200,000	$200
$200,000 but less than $1M	$200 plus .001625 of excess over $200,000
$1M but less than $10M	$1,500 plus .00034 of excess over $1M
$10M but less than $25M	$4,560 plus .00014 of excess over $10M
$25M but less than $50M	$6,660 plus .00017 of excess over $25M
$50M but less than $100M	$10,910 plus .00019 of excess over $50M
$100M but less than $500M	$20,410 plus .000080 of excess over $100M
$500M but less than $1,000M	$52,410 plus .000072 of excess over $500M
$1,000M but less than $2,000M	$88,410 plus .000069 of excess over $1,000M
$2,000M and over	$157,410 plus .000062 of excess over $2,000M

Figure: 16 TAC §311.5(c)

Type of License	1 Year Fee	2 Year Fee	3 Year Fee
Adoption Program Personnel	$25		
Announcer	$35		
Apprentice Jockey	$75		
Assistant Farrier/Plater/Blacksmith	$25		
Assistant Starter	$25		
Assistant Trainer	$100		
Assistant Trainer/Owner	$100		
Association Assistant Management	$50		
Association Management Personnel	$75		
Association Officer/Director	$100		
Association Other	$75		
Association Staff	$35		
Association Veterinarian	$75		
Authorized Agent	$15		
Chaplain	$25		
Chaplain Assistant	$25		
Exercise Rider	$25		
Farrier/Plater/Blacksmith	$75		
Groom/Hot Walker	$25		
Jockey	$100	$200	$300
Jockey Agent	$100		
Kennel	$75		
Kennel Helper	$25		
Kennel Owner	$100	$200	$300
Kennel Owner/Owner	$100	$200	$300
Kennel Owner/Owner-Trainer	$100	$200	$300
Kennel Owner/Trainer	$100	$200	$300
Lead-Out	$25		
Maintenance	$35		
Medical Staff	$35		
Miscellaneous	$25		
Multiple Owner	$35	$70	$100
Mutuel Clerk	$35		
Mutuel Other	$35		
Owner	$100	$200	$300
Owner-Trainer	$100	$200	$300
Pony Person	$25		
Racing Industry Representative	$100		
Racing Industry Staff	$30		
Racing Official	$50		
Security Officer	$30		
Stable Foreman	$50		
Tattooer	$100		
Test Technician	$25		
Tooth Floater	$100		
Trainer	$100	$200	$300

Training Facility Employee	$30		
Training Facility General Manager	$50		
Valet	$25		
Vendor Concessionaire	$100		
Vendor/Concessionaire Employee	$30		
Vendor Totalisator	$500		
Vendor/Totalisator Employee	$50		
Veterinarian	$100	$200	$300
Veterinarian Assistant	$30		

Figure: 22 TAC §577.15

(a) **EXAMINATIONS**	**FEE**
Texas State Board Licensing Exam (SBE)	$155
Special License	$155
(b) **APPLICATION PROCESSING** (except for Provisional License)	$50

(c) **RENEWALS**	**BOARD FEE**	**PROF. FEE**	**TOTAL FEE**
License Renewal (current)	$166	$200	$366
Delinquent Renewals (90 days or less)	$249	$200	$449
Delinquent Renewals (over 90 days but less than one year)	$332	$200	$532
Inactive Renewals	$166	$0	$166
Delinquent Inactive Renewal (90 days or less)	$249	$0	$249
Delinquent Inactive Renewals (over 90 days but less than one year)	$332	$0	$332
Special License	$161	$200	$361
Delinquent Special License Renewals (90 days or less)	$242	$200	$442
Delinquent Special License Renewals (over 90 days but less than one year)	$323	$200	$523
(d) **PROVISIONAL LICENSE**	$255	$0	$255

(e) **OPEN RECORDS**
Charges for all open records and other goods/services such as tapes, disks, will be in accordance with the Office of the Attorney General 1 TAC §§70.1 - 70.11 (relating to Cost of Copies of Public Information)

(f) **RETURNED CHECK FEE**	$25

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of the Implementation of a 2009A Qualified Mortgage Credit Certificate Program

The Texas State Affordable Housing Corporation (the Corporation), a nonprofit corporation organized under the laws of the State of Texas (the Program Area), is implementing a qualified mortgage credit certificate program (the Program) within the Program Area to assist eligible purchasers. A Mortgage Credit Certificate (MCC) is an instrument designed to assist persons better afford home ownership. The MCC Program allows first-time homebuyers an annual federal income tax credit equal to the lesser of $2,000 or the credit rate for the MCC multiplied by the amount of interest paid by the holder on a home mortgage loan during each year that they occupy the home as their principal residence.

An eligible purchaser of a residence located within a Program Area may apply to the Corporation for an MCC through a participating lender of his or her choice at the time of purchasing a principal residence and obtaining a mortgage loan from a participating lender.

To be an eligible purchaser to receive an MCC, a purchaser must meet the following criteria:

(1) Be one of the following:

(a) A household whose annual income does not exceed 80% Area Median Family Income (AMFI); or

(b) A full-time Texas classroom teacher, teacher's aide, school librarian, school nurse, school counselor, or an allied health or nursing faculty member; or

(c) A full-time paid fire fighter, peace officer, corrections officer, juvenile corrections officer, county jailer, EMS personnel, or public security officer, working in the State of Texas.

(2) The applicant for the MCC cannot have had an ownership interest in his or her principal residence during the three-year period ending on the date the mortgage loan is obtained.

(3) The applicant must intend to occupy the residence with respect to which the MCC is obtained as his or her principal residence within 60 days after the MCC is issued. The MCC issued to an applicant will be revoked if the residence to which the MCC relates ceases to be occupied by the applicant as his or her principal residence.

(4) The MCC cannot be issued to an applicant in conjunction with the replacement or refinancing of an existing mortgage loan. The MCC can, however, be obtained in conjunction with the replacement of a construction period or bridge loan having a term of less than 24 months.

(5) Federal law imposes limitations on the purchase price of homes financed under the program. The current maximum purchase price for a one-family home in a non-targeted area is $258,691 and for a one-family home in a targeted area is $316,177. These limitations are periodically adjusted. Two-family, three-family and four-family residences are also eligible, provided that one of the units will be occupied by the mortgagor as his or her principal residence and that the residence was first occupied for residential purposes at least five years prior to the closing of the mortgage. The cost of the residence must not exceed the maximum purchase price limits. The purchase price limitation does not apply to qualified home improvement loans. There are special rules that apply to qualified rehabilitation loans.

(6) Additionally, an applicant's current annualized family income may not exceed 80% of the AMFI if the eligible purchaser is a purchaser listed under (1)(a) above or the greater of 115% of the AMFI adjusted for family size or the maximum amount permitted by §143(f) of the Internal Revenue Code of 1986 if the purchaser is a purchaser listed under (1)(b) or (1)(c) above. Visit www.tsahc.org to view the maximum incomes allowed.

Anyone receiving an MCC and selling his or her residence within nine years of the issuance of the MCC may be required to return all or a portion of the tax credit received in connection therewith to the Internal Revenue Service.

To defray the costs of implementing the Program, the Corporation will charge applicants a $100 application fee, a $250 closing package review fee, plus an MCC issuance fee equal to one percent of the amount of such person's loan.

The Corporation strongly encourages anyone who believes that he or she qualifies for an MCC to apply at the offices of a participating lender. For more information regarding the Program and its restrictions, including a list of current participating lenders, please contact the Paige McGilloway, Single Family Programs Manager, at (888) 638-3555 or by email at pmcgilloway@tsahc.org.

TRD-200902593
David Long
President
Texas State Affordable Housing Corporation
Filed: June 24, 2009

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 12, 2009, through June 18, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 24, 2009. The public comment period for this project will close at 5:00 p.m. on July 24, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: Bigler Terminals, LP; Location: The project is located at adjacent to the Houston Ship Channel (HSC) in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 290,787.867; Northing: 3,291,041.853. Project Description: The applicant proposes to construct new terminal facilities and dredge a marine basin for a ship and barge dock located on a 180-acre undeveloped tract adjacent to the HSC and existing petrochemical facility (the "Project"). Planned facilities and services associated with the Project include bulk chemical and fuel storage of up to 12 million barrels, and additional intermodal transportation support facilities, including rail car loading, unloading, and storage facilities; truck loading and unloading facilities; and four deepwater berths. CCC Project No.: 09-0184-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00909 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Dow Chemical; Location: The project route for two 16-inch pipelines extends from a point north of Dow Plant B across State Highway 332, crosses Oyster Creek, and continues to a point near Gate B at the Dow Stratton Ridge Facility. The project route for one 8-inch pipeline extends from Dow Plant A to Dow Plant B. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Jackson, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 268603; Northing: 3212395. Project Description: The applicant proposes to construct two underground 16-inch plastic pipelines and one 8-inch steel pipeline along the 11.2-mile route. There will be 13.13 acres of temporary impacts to palustrine jurisdictional wetlands within the right-of-way for workspace and 2.23 acres of permanent impacts to forested jurisdictional wetlands resulting from the pipeline placement. The applicant proposes to compensate for unavoidable impacts to forested wetlands by transferring ownership of 339 acres of forested land currently owned by Dow Chemical, Inc., containing 15.643 acres palustrine forested wetlands and emergent wetlands, via the National Fish and Wildlife Foundation, to the United States Fish and Wildlife Service. CCC Project No.: 09-0185-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-01289 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200902573

Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: June 22, 2009

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Comptroller of Public Accounts

Notice of Contract Award

The Comptroller of Public Accounts (Comptroller) announces the notice of contract award for providing professional unclaimed property management and related services under RFP #193c to ACS State & Local Solutions, Inc., 260 Franklin Street, 11th Floor, Boston, Massachusetts 02110 (Contractor).

The notice of request for proposals was published in the May 1, 2009, issue of *Texas Register* (34 TexReg 2689).

The term of the contract is from June 16, 2009 to August 31, 2010, with option for two (2) additional one-year renewals, one year at a time. The total amount of the contract is not to exceed $1,000,000.00, plus incentive fees, if earned.

TRD-200902490
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 19, 2009

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/29/09 - 07/05/09 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/29/09 - 07/05/09 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

TRD-200902581
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 23, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes,

which in this case is **August 3, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 3, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Air Products, LLC; DOCKET NUMBER: 2009-0278-IWD-E; IDENTIFIER: RN102041282; LOCATION: La Porte, Harris County; TYPE OF FACILITY: industrial gases production; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0001280000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for copper; PENALTY: $2,540; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2009-0267-AIR-E; IDENTIFIER: RN100825249; LOCATION: Old Ocean, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 22690, Special Condition (SC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,700; Supplemental Environmental Project (SEP) offset amount of $3,880 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Chevron Phillips Chemical Company, LP; DOCKET NUMBER: 2009-0428-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 37063, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,750; SEP offset amount of $3,900 applied to Barbers Hill Independent School District-Energy Efficiency Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: CIRCLE K STORES, INC. dba Circle K Store 2701418; DOCKET NUMBER: 2009-0336-PST-E; IDENTIFIER: RN104308127; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure; PENALTY: $3,246; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2009-0300-AIR-E; IDENTIFIER: RN100210517; LOCATION: Sunray, Moore County; TYPE OF FACILITY: petroleum refining plant; RULE VIOLATED: 30 TAC §101.201(b)(1)(G) and (c) and THSC, §382.085(b), by failing to include the compound descriptive type of individually listed compounds in the final emissions event report and to submit it within two weeks after the end of the event; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Numbers 9708 and PSD-TX-861M2, SC Numbers 2 and 25, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to submit the initial emissions event report within 24 hours after discovery of the event; PENALTY: $17,004; SEP offset amount of $6,802 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Flying J, Inc.; DOCKET NUMBER: 2008-1835-AIR-E; IDENTIFIER: RN100814458; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: truck stop terminal and convenience store with gasoline dispensing; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline; PENALTY: $1,240; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(7) COMPANY: Tim Kahir Helo; DOCKET NUMBER: 2009-0391-PST-E; IDENTIFIER: RN101852515; LOCATION: Coahoma, Howard County; TYPE OF FACILITY: underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.49(a)(1) and §334.54(c)(1) and the Code, §26.3475(d), by failing to adequately protect the UST system from corrosion; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; and 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; PENALTY: $4,976; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(8) COMPANY: Raymond C. Honke; DOCKET NUMBER: 2009-0484-PWS-E; IDENTIFIER: RN101198471; LOCATION: Burnet County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.109(c)(2)(A) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution coliform samples and by failing to provide public notice of the failure to collect routine samples; PENALTY: $1,332; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(9) COMPANY: NAPM ENTERPRISES, INC. dba Citgo Food Mart; DOCKET NUMBER: 2009-0528-PST-E; IDENTIFIER: RN102791118; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground metal components of a UST system; 30 TAC §334.45(c)(3)(A), by failing to ensure that

an emergency shutoff valve is installed on each pressurized delivery or product line and securely anchored at the base of the dispenser; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,075; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Owens Corning Roofing and Asphalt, LLC; DOCKET NUMBER: 2009-0315-AIR-E; IDENTIFIER: RN100222686; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: asphalt roofing manufacturing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a permit compliance certification; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: RAHISA UNITED, INC. dba A to Z Food & Fuel; DOCKET NUMBER: 2009-0137-PST-E; IDENTIFIER: RN104735493; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $16,242; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: City of San Marcos; DOCKET NUMBER: 2008-1842-EAQ-E; IDENTIFIER: RN105008692; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: sewage collection system; RULE VIOLATED: 30 TAC §213.4(j) and Edwards Aquifer Protection Plan 11-06071901 SC Number 3, by failing to notify the appropriate regional office in writing and obtain approval from the executive director prior to initiating any physical modification of the approved organized sewage collection system over the Edwards Aquifer Recharge Zone; PENALTY: $2,080; SEP offset amount of $1,664 applied to Hill Country Conservancy - Wenzel Tract Quarry - Edwards Aquifer Recharge & Wetland Restoration; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(13) COMPANY: City of Teague; DOCKET NUMBER: 2009-0594-MWD-E; IDENTIFIER: RN102181716; LOCATION: Freestone County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010300001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations for five-day biochemical oxygen demand and total suspended solids (TSS); and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010300001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report; PENALTY: $7,462; SEP offset amount of $5,970 applied to RC&D - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2009-0462-MWD-E; IDENTIFIER: RN102412558; LOCATION: Brazoria County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010743001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for dissolved oxygen and ammonia-nitrogen; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010743001, Sludge Provisions, by failing to timely submit the annual sludge report; PENALTY: $3,360; SEP offset amount of $2,688 applied to Brazoria County - Wastewater Treatment Assistance For Low-Income Homeowners; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2009-0434-MWD-E; IDENTIFIER: RN102075744; LOCATION: Palo Pinto County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011311001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for chlorine and TSS; PENALTY: $8,010; SEP offset amount of $6,408 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Tomas Perez dba Tomas Body Shop; DOCKET NUMBER: 2009-0674-AIR-E; IDENTIFIER: RN105650097; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: surface coating plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating a surface coating facility; PENALTY: $1,100; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Unison Drilling, Inc.; DOCKET NUMBER: 2009-0464-AIR-E; IDENTIFIER: RN105349088; LOCATION: Medina County; TYPE OF FACILITY: equipment maintenance and storage site; RULE VIOLATED: 30 TAC §116.110(a)(4) and THSC, §382.085(b), by failing to obtain authorization to conduct surface coating; PENALTY: $820; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2009-0288-AIR-E; IDENTIFIER: RN100211663; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Flexible Permit Number 2937, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(D), (G), and (H) and §122.143(4), Permit Number 2238, SC Number (2)(F), and THSC, §382.085(b), by failing to submit an administratively complete final report for Incident Number 113325; PENALTY: $24,484; SEP offset amount of $12,242 applied to City of Corpus Christi - Alternative Energy Use and Conservation at the Oso Conservation Interpretive Park; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(19) COMPANY: Wilkins Contracting, Inc.; DOCKET NUMBER: 2009-0858-WQ-E; IDENTIFIER: RN105708176; LOCATION: Tyler, Smith County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: WRL General Contractors, Limited; DOCKET NUMBER: 2009-0414-WQ-E; IDENTIFIER: RN105471155; LOCATION: Tyler, Smith County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §305.125(1), TPDES Construction General Permit Number TXR15JY67, Part III, Section F(6), by failing to prevent the unauthorized discharge of sediment into or adjacent to water in the state due to the failure to implement/maintain best management practices; PENALTY: $11,875; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200902575
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 23, 2009

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Texas Facilities Commission

Request for Proposals #303-9-11840

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General and the Comptroller of Public Accounts, announces the issuance of Request for Proposals (RFP) #303-9-11840. TFC seeks a five and ten year lease of approximately 12,120 square feet of office space in Victoria, Victoria County, Texas.

The deadline for questions is July 10, 2009 and the deadline for proposals is July 17, 2009 at 3:00 p.m. The award date is August 19, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=83319.*

TRD-200902594
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 24, 2009

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Request for Proposals #303-9-12065

The Texas Facilities Commission (TFC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-9-12065. TFC seeks a five (5) and ten (10) year lease of approximately 6,067 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is July 10, 2009 and the deadline for proposals is July 28, 2009 at 3:00 p.m. The award date is September 16, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=83316.*

TRD-200902584
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 23, 2009

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Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract 529-06-0425-00038 to **Navigant Consulting, Inc.** an entity with a principal place of business 30 South Wacker, Suite 3100, Chicago, IL 60606. The contractor will provide consulting services and application development services to the HHSC for the purpose of designing and developing a risk-based contract performance management/monitoring tool for the Texas Medicaid/Children with Special Health Care Needs (CSHCN) Claims Processing, Primary Care Case Management (PCCM) and Pharmacy Claims and Rebate Administration (PCRA) contract.

The total value of the contract with **Navigant Consulting, Inc.** is $259,690.00. The contract was executed on June 9, 2009 and will expire on December 31, 2009, unless extended or terminated sooner by the parties. **Navigant Consulting, Inc.** will produce numerous documents and reports during the term of the contract, with the final reporting due by December 2009.

TRD-200902472
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: June 17, 2009

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Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services an amendment to the Home and Community-Based Services (HCS) waiver. The HCS waiver is a Medicaid Home and Community-Based Services waiver under the authority of §1915(c) of the Social Security Act. The HCS program is currently approved for the five-year period beginning September 1, 2008, and ending August 31, 2013. The proposed effective date for the amendment is November 1, 2008.

The Home and Community-Based Services waiver program provides individualized services and supports to persons with mental retardation who are living with their families, in their own homes, or in other community settings, such as small group homes. To be eligible for the program, individuals must be diagnosed with mental retardation or a related condition, meet eligibility requirements for admission to an intermediate care facility for individuals with mental retardation (ICF-MR), and meet financial eligibility criteria.

This amendment will add 202 additional slots to the waiver to accommodate individuals leaving services in an ICF/MR facility.

In addition, this amendment will revise the current billing cycle from a 95-day billing cycle to a 12-month billing cycle, which will increase the length of time providers have to submit claims.

HHSC is requesting that the waiver amendment be approved for the period beginning November 1, 2008, through August 31, 2013. This amendment maintains cost neutrality for waiver years 2008 through 2013.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by e-mail at Christine.Longoria@hhsc.state.tx.us.

TRD-200902474
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 18, 2009

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2009.

The proposed amendment will adjust payment rates for the Day Activity and Health Services (DAHS) program as a result of the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009), which appropriated general revenue funds for provider rate increases for the DAHS Program. The reimbursement methodology will be modified to indicate that for the period beginning September 1, 2009 and ending August 31, 2011, DAHS payment rates will be equal to the payment rates in effect August 31, 2009, plus $0.30 per unit of service.

The proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of $185,812 for the remainder of federal fiscal year (FFY) 2009 (September 1, 2009, through September 30, 2009), with approximately $127,764 in federal funds and approximately $58,048 in state general revenue. For FFY 2010, the proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of $2,236,856, with approximately $1,562,444 in federal funds and approximately $674,412 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200902578
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 23, 2009

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed effective date for this amendment is September 1, 2009.

The proposed amendment will adjust payment rates for the Primary Home Care (PHC) program as a result of the 2010-11 General Appropriations Act (Article II, Health and Human Services, 81st Legislature, Regular Session, 2009), which appropriated general revenue funds for provider rate increases for the PHC Program. The reimbursement methodology will be modified to indicate that for the period beginning September 1, 2009 and ending August 31, 2011, PHC payment rates will be equal to the payment rates in effect August 31, 2009, plus $0.80 per unit of service.

The proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of $5,630,545 for the remainder of federal fiscal year (FFY) 2009 (September 1, 2009, through September 30, 2009), with approximately $3,871,563 in federal funds and approximately $1,758,982 in state general revenue. For FFY 2010, the proposed adjustment of payment rates is estimated to result in additional annual aggregate expenditures of $67,977,122, with approximately $47,482,020 in federal funds and approximately $20,495,102 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200902579
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 23, 2009

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by UNIQUE INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Chicago, Illinois.

Application for admission to the State of Texas by UNIVERSAL INSURANCE COMPANY OF NORTH AMERICA, a foreign fire and casualty company. The home office is in Sarasota, Florida.

Application for admission to the State of Texas by DAKOTA HOMESTEAD TITLE INSURANCE COMPANY, a foreign title company. The home office is in Sioux Falls, South Dakota.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200902592
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 24, 2009

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Third Party Administrator Applications

The following third party administrator applications have been filed with the Texas Department of Insurance and are under consideration.

Application of SXC HEALTH SOLUTIONS, INC., (using the assumed name SXC) a domestic third party administrator. The home office is DALLAS, TEXAS.

Application of SCION DENTAL, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register,* addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200902596
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 24, 2009

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Texas Lottery Commission

Instant Game Number 1255 "$100,000 Jumbo Bucks III"

A. The name of Instant Game No. 1255 is "$100,000 JUMBO BUCKS III". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1255 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1255.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, JUMBO SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000, and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1255 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
JUMBO SYMBOL	WINX2
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$2,000	TWO THOU
$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $200.

H. High-Tier Prize - A prize of $2,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1255), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1255-0000001-001.

K. Pack - A pack of "$100,000 JUMBO BUCKS III" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fan-folded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C, and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$100,000 JUMBO BUCKS III" Instant Game No. 1255 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$100,000 JUMBO BUCKS III" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JUMBO" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two (2) matching non-winning prize symbols will appear on a ticket.

D. No duplicate SERIAL NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and $5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "$100,000 JUMBO BUCKS III" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$100,000 JUMBO BUCKS III" Instant Game prize of $2,000 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$100,000 JUMBO BUCKS III" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$100,000 JUMBO BUCKS III" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$100,000 JUMBO BUCKS III" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1255. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1255 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	806,400	12.50
$4	927,360	10.87
$5	120,960	83.33
$10	141,120	71.43
$20	60,480	166.67
$50	45,360	222.22
$200	8,148	1,237.11
$2,000	30	336,000.00
$100,000	6	1,680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.78. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1255 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1255, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200902491
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2009

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Instant Game Number 1256 "$500,000 Giant Jumbo Bucks III"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1256 is "$500,000 GIANT JUMBO BUCKS III". The play style is "key number match with auto win (5X)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1256 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1256.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, JUMBO SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000 and $500,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1256 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
JUMBO SYMBOL	WINX5
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV

$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$500,000	500 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $500,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1256), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1256-0000001-001.

K. Pack - A pack of "$500,000 GIANT JUMBO BUCKS III" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$500,000 GIANT JUMBO BUCKS III" Instant Game No. 1256 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$500,000 GIANT JUMBO BUCKS III" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins 5 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JUMBO" (win x 5) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than three (3) matching non-winning prize symbols will appear on a ticket.

D. No duplicate SERIAL NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "$500,000 GIANT JUMBO BUCKS III" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$500,000 GIANT JUMBO BUCKS III" Instant Game prize of $1,000, $5,000 or $500,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$500,000 GIANT JUMBO BUCKS III" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$500,000 GIANT JUMBO BUCKS III" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$500,000 GIANT JUMBO BUCKS III" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1256. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1256 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	750,400	10.71
$10	750,400	10.71
$15	241,200	33.33
$20	214,400	37.50
$50	99,495	80.81
$100	9,246	869.57
$500	1,005	8,000.00
$1,000	201	40,000.00
$5,000	15	536,000.00
$500,000	3	2,680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.89. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1256 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1256, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200902492
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2009

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Instant Game Number 1257 "$1,000,000 Mega Jumbo Bucks III"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1257 is "$1,000,000 MEGA JUMBO BUCKS III". The play style is "key number match with multiplier (10X)".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1257 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1257.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, JUMBO SYMBOL, $10.00, $20.00, $50.00, $100, $200, $500, $1,000, $2,500 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1257 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
JUMBO SYMBOL	WINX10
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND

$500	FIV HUND
$1,000	ONE THOU
$2,500	25 HUND
$1,000,000	$1MILL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $2,500 or $1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1257), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1257-0000001-001.

K Pack - A pack of "$1,000,000 MEGA JUMBO BUCKS III" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 050 while the other fold will show the back of 001 and front 050.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$1,000,000 MEGA JUMBO BUCKS III" Instant Game No. 1257 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$1,000,000 MEGA JUMBO BUCKS III" Instant Game is determined once the latex on the ticket is scratched off to expose 54 (fifty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any SERIAL NUMBER play symbol, the player wins PRIZE shown for that number. If a player reveals a "JUMBO" play symbol, the player wins 10 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "JUMBO" (win x 10) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than four (4) matching non-winning prize symbols will appear on a ticket.

D. No duplicate SERIAL NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "$1,000,000 MEGA JUMBO BUCKS III" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$1,000,000 MEGA JUMBO BUCKS III" Instant Game prize of $1,000, $2,500 or $1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$1,000,000 MEGA JUMBO BUCKS III" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$1,000,000 MEGA JUMBO BUCKS III" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$1,000,000 MEGA JUMBO BUCKS III" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing,

distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1257. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1257 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	840,000	7.14
$20	720,000	8.33
$50	107,500	55.81
$100	75,750	79.21
$200	10,000	600.00
$500	2,150	2,790.70
$1,000	100	60,000.00
$2,500	50	120,000.00
$1,000,000	3	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1257 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1257, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200902493
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2009

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Instant Game Number 1259 "Loteria® Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1259 is "LOTERIA® TEXAS". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1259 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1259.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: THE ARROWS SYMBOL, THE BELL SYMBOL, THE BOOT SYMBOL, THE CACTUS SYMBOL, THE CANOE SYMBOL, THE CROWN SYMBOL, THE DEER SYMBOL, THE DRUM SYMBOL, THE FISH SYMBOL, THE FLOWERPOT SYMBOL, THE FROG SYMBOL, THE HAND SYMBOL, THE LADDER SYMBOL, THE MERMAID SYMBOL, THE MOON SYMBOL, THE MUSICIAN SYMBOL, THE PARROT SYMBOL, THE PEAR SYMBOL, THE PITCHER SYMBOL, THE ROOSTER SYMBOL, THE ROSE SYMBOL, THE STAR SYMBOL, THE SUN SYMBOL, THE TREE

SYMBOL, THE UMBRELLA SYMBOL, THE VIOLIN SYMBOL, THE WATERMELON SYMBOL, THE WORLD SYMBOL and THE BARREL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1259 - 1.2D

PLAY SYMBOL	CAPTION
THE ARROWS SYMBOL	THE ARROWS
THE BELL SYMBOL	THE BELL
THE BOOT SYMBOL	THE BOOT
THE CACTUS SYMBOL	THE CACTUS
THE CANOE SYMBOL	THE CANOE
THE CROWN SYMBOL	THE CROWN
THE DEER SYMBOL	THE DEER
THE DRUM SYMBOL	THE DRUM
THE FISH SYMBOL	THE FISH
THE FLOWERPOT SYMBOL	THE FLOWERPOT
THE FROG SYMBOL	THE FROG
THE HAND SYMBOL	THE HAND
THE LADDER SYMBOL	THE LADDER
THE MERMAID SYMBOL	THE MERMAID
THE MOON SYMBOL	THE MOON
THE MUSICIAN SYMBOL	THE MUSICIAN
THE PARROT SYMBOL	THE PARROT
THE PEAR SYMBOL	THE PEAR
THE PITCHER SYMBOL	THE PITCHER
THE ROOSTER SYMBOL	THE ROOSTER
THE ROSE SYMBOL	THE ROSE
THE STAR SYMBOL	THE STAR
THE SUN SYMBOL	THE SUN
THE TREE SYMBOL	THE TREE
THE UMBRELLA SYMBOL	THE UMBRELLA
THE VIOLIN SYMBOL	THE VIOLIN
THE WATERMELON SYMBOL	THE WATERMELON
THE WORLD SYMBOL	THE WORLD
THE BARREL SYMBOL	THE BARREL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $10.00, $17.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $33.00, $50.00, $80.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $33,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1259), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1259-0000001-001.

K. Pack - A pack of "LOTERIA® TEXAS" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LOTERIA® TEXAS" Instant Game No. 1259 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LOTERIA® TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. The player scratches off the CALLER'S CARD area to reveal 14 symbols. The player scratches only the symbols on the LOTERIA® CARD that match the symbols revealed on the CALLER'S CARD to reveal a bean. The player reveals 4 beans in any complete horizontal or vertical line in the LOTERIA® CARD to win the prize shown for that line. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to three (3) times per the prize structure.

C. No adjacent tickets will contain identical CALLER'S CARD play symbols in exactly the same locations.

D. No duplicate play symbols in the CALLER'S CARD play area.

E. On non-winning tickets, there will be at least one near win. A near win is defined as matching 3 of the 4 symbols to the CALLER'S CARD for a given row or column.

F. There will be no occurrence of all 4 symbols in either diagonal matching the CALLER'S CARD symbols.

G. At least 8, but no more than 12, CALLER'S CARD play symbols will match a symbol on the LOTERIA® CARD on a ticket.

H. No duplicate play symbols on a LOTERIA® CARD as indicated in the artwork section.

I. Each LOTERIA® CARD will have an occurrence of the rooster symbol as indicated in the artwork section.

2.3 Procedure for Claiming Prizes.

A. To claim a "LOTERIA® TEXAS" Instant Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the

ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LOTERIA® TEXAS" Instant Game prize of $3,000 or $33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LOTERIA® TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LOTERIA® TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1259. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1259 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	1,451,520	6.94
$4	322,560	31.25
$7	282,240	35.71
$10	181,440	55.56
$17	161,280	62.50
$20	161,280	62.50
$30	15,288	659.34
$33	10,500	960.00
$50	8,568	1,176.47
$80	8,400	1,200.00
$300	4,200	2,400.00
$3,000	92	109,565.22
$33,000	20	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1259 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1259, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200902494
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2009

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 18, 2009, Cedar Valley Communications filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60766. Applicant intends to reflect a change in ownership/control and a name change.

The Application: Application of Cedar Valley Communications for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 37121.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 8, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37121.

TRD-200902582
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 23, 2009

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Notice of Application for Service Area Exception Within Hansford County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 18, 2009, for an amendment to certificated service area for a service area exception within Hansford County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company for a Certificate of Convenience and Necessity for a Service Area Exception in Hansford County. Docket Number 37120.

The Application: SPS filed an application for a service area boundary exception to allow SPS to provide service to Noble Great Plains Windpark, LLC, a customer located within the certificated service area of North Plains Electric Cooperative.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 10, 2009, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 37120.

TRD-200902580
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 23, 2009

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 17, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The applicant will file the LRIC study on June 26, 2009.

Docket Title and Number: Application of Consolidated Communications of Fort Bend d/b/a Consolidated Communications for Approval of LRIC Study for Safety Line Service Bundled with Broadband Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 37116.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 37116. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 37116.

TRD-200902484
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 19, 2009

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 17, 2009, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on June 26, 2009.

Docket Title and Number: Application of Consolidated Communications of Texas d/b/a Consolidated Communications for Approval of LRIC Study for Safety Line Service Bundled with Broadband Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 37117.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 37117. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 37117.

TRD-200902485
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 19, 2009

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Revised Public Notice of Workshop on the Storm Hardening Benchmark Studies and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the Storm Hardening Benchmark Studies on Wednesday, July 15, 2009, at 9:00 a.m. in the Commissioner's Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. This workshop was originally scheduled for Wednesday, July 8, 2009, and has now been rescheduled to Wednesday, July 15, 2009. Project Number 36375, *Cost Benefit Analysis of the Deployment of Utility Infrastructure Upgrades and Storm Hardening Programs* has been established for this proceeding. Please refer to the Hazard Trees Benchmark Survey and Best Practices Preliminary Draft Report, currently filed under Project Number 36375, and Targeted Storm Hardening Report Benchmark Survey and Best Practices Preliminary Draft Report, which will be filed under Project Number 36375 no later than Friday, June 26, 2009. Interested parties may file written comments on these reports under Project Number 36375 by Tuesday, July 7, 2009.

Ten days prior to the workshop, the commission shall make available in Central Records under Project Number 36375 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Regina Chapline, Infrastructure Policy Analyst, Infrastructure & Reliability Division at (512) 936-7392, or regina.chapline@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200902589
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 24, 2009

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Office of Rural Community Affairs

State Office of Rural Health's 2009 Rural Health Work Plan

The Office of Rural Community Affairs announces the State Office of Rural Health's (SORH's) 2009 Rural Health Work Plan is now available for public review and comment.

SORH's 2009 Rural Health Work Plan is now available on our website at www.orca.state.tx.us, Rural Health, Publications.

Written comments may be submitted to Theresa Cruz, Director of State Office of Rural Health, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. You may also email comments to tcruz@orca.state.tx.us.

Comments must be received by Friday, July 24th.

The overall objectives for the Work Plan are to provide support to small rural hospitals in order to maximize access to healthcare for rural residents of the state, to work with partner agencies, associations and educational institutions to provide education to students regarding the benefits and financial incentives of health care professionals practicing in rural areas, offer financial assistance programs to increase the number of health professionals in rural areas, and coordinate rural health resources and activities by working with Federal, State and local agencies, as well as health care providers and rural residents to increase access to healthcare.

TRD-200902595
Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Filed: June 24, 2009

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Services

The City of New Braunfels, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: The City of New Braunfels, New Braunfels Municipal. TxDOT CSJ No. 0915NWBRNF. Scope: Prepare a Business Plan to provide an overview analysis of the airport addressing airport policy, airport building standards, airport rates and charges, market analysis, financial analysis, and risk assessment; provide an assessment of business/economic development opportunities; recommend an eight to ten year strategic course of action to pursue development and to address issues at the New Braunfels Municipal Airport.

There is no HUB goal for this project. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.txdot.gov/services/aviation/consultant.htm.

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Seven completed, unfolded copies of Form AVN-551 **must be received** by TxDOT, in the Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than July 28, 2009, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The Consultant Selection Committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects is located at:

http://www.txdot.gov/services/aviation/consultant.htm.

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Michelle Hannah, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200902583
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 23, 2009

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Public Notice - Revised Record of Decision, Grand Parkway Segment E, Harris County, Texas

A Revised Record of Decision (ROD) has been issued for the Final Environmental Impact Statement for the Grand Parkway (State Highway 99), Segment E from Interstate Highway 10 (IH 10) to United States Highway 290 (US 290) in Harris County, Texas. The Revised ROD documents the decision to reaffirm the approval of the Selected Alternative described in the June 24, 2008 ROD. The decision also provides environmental approval of a design change at West Road, and documents additional analyses of several issues.

The Revised ROD is available for viewing or copying at the Grand Parkway Associate website:

www.grandpky.com;

at the Texas Department of Transportation's Houston District Office located at 7600 Washington Avenue, Houston, Texas; or at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas. For further information, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-200902590
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 24, 2009

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Public Notice - Revised Record of Decision, Grand Parkway Segment F-1, Harris County, Texas

A Revised Record of Decision (ROD) has been issued for the Final Environmental Impact Statement for the Grand Parkway (State Highway 99), Segment F-1 from United States Highway 290 (US 290) to State Highway 249 (SH 249) in Harris County, Texas. The Revised ROD documents the decision to reaffirm the approval of the Selected Alternative described in the November 20, 2008 ROD. The decision

also provides environmental approval of a design change at the future Mason Road grade separation, and documents additional analyses of several issues.

The Revised ROD is available for viewing or copying at the Grand Parkway Associate website:

www.grandpky.com;

at the Texas Department of Transportation's Houston District Office located at 7600 Washington Avenue, Houston, Texas; or at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas. For further information, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-200902591
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 24, 2009

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January - December 2010 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices*.** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue Number	**Issue Date**	**Deadline for Rules: 12 Noon**	**Deadline for Other Documents: 12 Noon**
1	Friday, January 1	**Friday, December 18*	**Friday, December 18*
2	Friday, January 8	Monday, December 28	Wednesday, December 30
3	Friday, January 15	Monday, January 4	Wednesday, January 6
Friday, January 15		*2009 Annual Index*	
4	Friday, January 22	Monday, January 11	Wednesday, January 13
5	Friday, January 29	**Friday, January 15*	Wednesday, January 20
6	Friday, February 5	Monday, January 25	Wednesday, January 27
7	Friday, February 12	Monday, February 1	Wednesday, February 3
8	Friday, February 19	Monday, February 8	Wednesday, February 10
9	Friday, February 26	**Friday, February 12*	Wednesday, February 17
10	Friday, March 5	Monday, February 22	Wednesday, February 24
11	Friday, March 12	Monday, March 1	Wednesday, March 3
12	Friday, March 19	Monday, March 8	Wednesday, March 10
13	Friday, March 26	Monday, March 15	Wednesday, March 17
14	Friday, April 2	Monday, March 22	Wednesday, March 24
15	Friday, April 9	Monday, March 29	Wednesday, March 31
Friday, April 9		*First Quarterly Index*	
16	Friday, April 16	Monday, April 5	Wednesday, April 7
17	Friday, April 23	Monday, April 12	Wednesday, April 14
18	Friday, April 30	Monday, April 19	Wednesday, April 21
19	Friday, May 7	Monday, April 26	Wednesday, April 28
20	Friday, May 14	Monday, May 3	Wednesday, May 5
21	Friday, May 21	Monday, May 10	Wednesday, May 12
22	Friday, May 28	Monday, May 17	Wednesday, May 19
23	Friday, June 4	Monday, May 24	Wednesday, May 26
24	Friday, June 11	**Friday, May 28*	Wednesday, June 2
25	Friday, June 18	Monday, June 7	Wednesday, June 9
26	Friday, June 25	Monday, June 14	Wednesday, June 16
27	Friday, July 2	Monday, June 21	Wednesday, June 23
Friday, July 2		*Second Quarterly Index*	
28	Friday, July 9	Monday, June 28	Wednesday, June 30
29	Friday, July 16	Monday, July 5	Wednesday, July 7
30	Friday, July 23	Monday, July 12	Wednesday, July 14
31	Friday, July 30	Monday, July 19	Wednesday, July 21
32	Friday, August 6	Monday, July 26	Wednesday, July 28
33	Friday, August 13	Monday, August 2	Wednesday, August 4
34	Friday, August 20	Monday, August 9	Wednesday, August 11
35	Friday, August 27	Monday, August 16	Wednesday, August 18
36	Friday, September 3	Monday, August 23	Wednesday, August 25
37	Friday, September 10	Monday, August 30	Wednesday, September 1
38	Friday, September 17	**Friday, September 3*	Wednesday, September 8

39	Friday, September 24	Monday, September 13	Wednesday, September 15
Issue Number	**Issue Date**	**Deadline for Rules: 12 Noon**	**Deadline for Other Documents: 12 Noon**
40	Friday, October 1	Monday, September 20	Wednesday, September 22
Friday, October 1		*Third Quarterly Index*	
41	Friday, October 8	Monday, September 27	Wednesday, September 29
42	Friday, October 15	Monday, October 4	Wednesday, October 6
43	Friday, October 22	Monday, October 11	Wednesday, October 13
44	Friday, October 29	Monday, October 18	Wednesday, October 20
45	Friday, November 5	Monday, October 25	Wednesday, October 27
46	Friday, November 12	Monday, November 1	Wednesday, November 3
47	Friday, November 19	Monday, November 8	Wednesday, November 10
48	Friday, November 26	Monday, November 15	Wednesday, November 17
49	Friday, December 3	**Friday, November 19*	**Friday, November 19*
50	Friday, December 10	Monday, November 29	Wednesday, December 1
51	Friday, December 17	Monday, December 6	Wednesday, December 8
52	Friday, December 24	Monday, December 13	Wednesday, December 15
53	Friday, December 31	Monday, December 20	Wednesday, December 22

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited
as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).